In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-634

UNITED STATES CIVIL SERVICE COMMISSION, ET AL., APPELLANTS,

v.

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

INDEX TO APPENDIX

	Page
Judicial Proceedings:	
Relevant Docket Entries	1
In the United States District Court for the District of Columbia:	
Plaintiffs' Complaint	3
*Exhibit 2 to Application for Convening of Three-Judge Court Civil Service Commission, Political Activity of Federal Officers and Employees, Pamphlet 20, May 1966	12
Plaintiffs' Interrogatories (Set 1)	38
Defendants' Motion to Dismiss	52
Order of July 23, 1971, directing defendants to produce specified information	53
Affidavit of Anthony L. Mondello, with attachments	54
Order denying defendants' Motion to Dismiss	69
Plaintiffs' Interrogatories (Set 2)	70
Defendants' Answer to Complaint	73
Defendants' Objections to Interrogatories	77
Order overruling defendants' objections to interrogatories in part and sustaining in part	79
Plaintiffs' Notice of Deposition	81

Page

Defendants' Answer to Interrogatories 82

*Exhibit A, Civil Service Commission, Political Activity and Political Assessments of Federal Office holders and Employees, Form 1236, September 1939 89

Affidavit of Roger W. Jones 117

Affidavit of James H. Rademacher, with exhibits A-L ... 122

Defendants' Motion for Protective Order 146

Order vacating Plaintiffs' Notice of Deposition 147

Stipulation concerning material in the record 148

**Transcript of Hearing held February 18, 1972 150

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* As reproduced in this Appendix, this document carries two sets of numbers—one set reflecting the document's internal pagination, and another set reflecting the pagination within the Appendix as a whole.

** The pages of the transcript of the hearing carry the original transcript pagination, as well as numbers which reflect the placement of the transcript within the Appendix as a whole.

Relevant Docket Entries

No. 577-71 in the United States District Court
For the District of Columbia

Date	Filings—Proceedings
1971	
March 18	Complaint, together with plaintiffs application for convening of a Three-Judge District Court, filed
March 31	Order denying application for convening of Three-Judge District Court, filed
April 6	Plaintiffs' motion for reconsideration of order denying application for convening of Three-Judge District Court, filed
May 26	Order granting plaintiffs' motion for reconsideration, and granting application for convening of Three-Judge District Court, filed
June 21	Defendants' motion to dismiss, filed
July 21	Plaintiffs' opposition to defendants' motion to dismiss, filed
November 1	Three-Judge Court order denying motion to dismiss, filed
November 11	Defendant's answer to complaint, filed
1972	
February 18	Trial begun and concluded
July 31	Opinion and order granting injunction against enforcement and granting stay pending determination by the Supreme Court of the United States, filed
August 25	Notice of Appeal to the United States Supreme Court, filed

No. 72-634 in the United States Supreme Court

1972	
October 24	Jurisdictional Statement, filed

Date	
November 9	Motion to Affirm, filed
December 12	Order of Court Noting Probable Jurisdiction

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

COMPLAINT FOR DECLARATORY JUDGMENT AND PRELIMINARY AND PERMANENT INJUNCTION

Plaintiffs, complaining of defendants, allege as follows:

JURISDICTION

1. This is an action for declaratory judgment and injunctive relief against the enforcement, operation and execution of an act of Congress for repugnance to the Constitution of the United States. The amount in controversy exceeds, exclusive of interest and costs, the sum of $10,000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 2201, 2282 and 2284.

PARTIES

2. Plaintiff, National Association of Letter Carriers, AFL-CIO, is a union of approximately 200,000 postal employees with headquarters in Washington, D. C. Plaintiff's members are employed by the United States Post Office Department, an Executive Agency, in positions in the competitive civil service. (5 U.S.C. § 2102). Under the provisions of the Postal Reorganization Act of 1970 (Pub. L. No. 91-375) members of plaintiff union will become employees of the United States Postal Service, on July 1, 1971, as directed by the Board of Governors.

3. Plaintiff Democratic and Republican Committees are the official Democratic or Republican political organizations for their respective counties or District of Columbia. They are unincorporated associations with members elected by members of their parties resident in their respective counties or District of Columbia. Plaintiff Committees are organized and exist for the purpose of, and are engaged in, obtaining support for and promoting the candidacies of candidates of their parties for political office at all levels of government.

4. Plaintiff, John O. Hummel, is a resident of the Commonwealth of Virginia who is qualified and registered to

vote in primary and general elections for local, state and national office. He is employed as an executive officer in the Internal Revenue Service, an Executive agency, a position in the competitive civil service. (5 U.S.C. § 2102).

5. Plaintiff, Marie Pinho is a resident of the Commonwealth of Virginia who is qualified and registered to vote in primary and general elections for local, state and national office. She is employed as a Systems Analyst by the National Library of Medicine, an Executive agency, a position included in the competitive civil service.

6. Plaintiff, Ronald J. Wylie, is a resident of the State of Maryland who is qualified and registered to vote in primary and general elections for local, state and national office. He is employed as the Director, Political and Legal Analysis Branch, National Center for Health Services Research and Development of the Department of Health, Education and Welfare, an Executive agency, a position included in the competitive civil service.

7. Plaintiff, Frank Mandicino, Jr., is a member of plaintiff National Association of Letter Carriers, and is presently serving as an Assistant Regional Field Director. He is an employee of the Post Office Department in the competitive civil service.

8. Plaintiff, J. Price Gee, is a member of plaintiff National Association of Letter Carriers. He is employed by the Post Office Department as a letter carrier, a position in the competitive civil service.

9. Plaintiff, Charles O. Myers, is a member of plaintiff National Association of Letter Carriers. He is employed by the Post Office Department as a letter carrier, a position in the competitive civil service.

10. Defendant, United States Civil Service Commission, is composed of three Commissioners appointed by the President. Defendant Commission is charged with authority and responsibility for the administration of the competitive civil service. (5 U.S.C. §§ 1101-1302.)

11. Defendants, Hampton, Johnson and Andolsek, are the Commissioners of the United States Civil Service Commission. They are sued herein in their capacity. Defendant Hampton is Chairman of the United States Civil Service Commission. He is sued herein in that capacity.

12. Defendant Commissioners are charged with responsibility and authority for the enforcement of the "political

management" and "political campaigning" provisions of the Hatch Act, 5 U.S.C. §§ 1502(a)(3) and 7324(a)(2), to prevent political activities of covered state and local officers and employees and federal employees in the competitive civil service. In addition, Defendant Commissioners are charged with authority and responsibility to review removals of federal employees in the federal excepted service from their positions for political activities which violate the said provisions of the Hatch Act.

13. Defendant, Elliot L. Richardson, is Secretary of Health, Education and Welfare of the United States of America. He is sued herein in that capacity. All functions of the HEW are performed under his direction, authority and responsibility. As Secretary of HEW he possesses authority and responsibility for the enforcement of the provisions of the Hatch Act against persons employed temporarily by HEW on a "while actually employed" basis. 5 C.F.R. §§ 733.201-733.204.

Classes Represented

14. Plaintiff, National Association of Letter Carriers, AFL-CIO, sues on behalf of itself and in its capacity as a representative of its members. Plaintiff Democratic and Republican Committees sue on behalf of themselves and as representatives of all federal and state employees who are covered by the "political management" and "political campaigning" provisions of the Hatch Act, 5 U.S.C. §§ 1502(a)(3) and 7324(a)(2), and who presently desire, or will in the future desire, to engage in political activities in connection with or on behalf of Plaintiff Committees, which activities are or may be violations of said provision of the Hatch Act. Plaintiffs individually and collectively sue on behalf of themselves and as representatives of the class of all federal and state employees covered by said provisions of the Hatch Act and who presently desire or will in the future desire to engage in activities which are or may be in violation of said provisions.

15. The membership of each of the classes described is so numerous that joinder of all members of the class is impracticable; there are questions of law common to the members of each class; the claims or defenses of the representative parties are typical of the claims or defenses of the classes they represent, and the representative parties

will fairly and adequately protect the interests of the parties they represent. In addition, the prosecution of separate actions by individual members of any of the classes would create a risk of inconsistent or varying adjudications with respect to individual members of that class which would establish incompatible standards of conduct for the party opposing that class; and the party opposing each of the classes has acted on grounds generally applicable to each class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and the questions of law common to the members of each of the classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

NATURE OF THE CONTROVERSY

16. This suit challenges the constitutional validity of those provisions of the Hatch Act which prohibit covered employees from taking "an active part in political management or in political campaigns." 5 U.S.C. §§ 1502(a)(3) and 7324(a)(2). Defendant Civil Service Commission has in the past enforced and threatened enforcement and continues to enforce and threaten enforcement of these political management and political campaigning provisions against employees of the United States Government in the competitive civil service and against covered state employees.

17. Such enforcement and threats of enforcement have been and continue to be directed against members of Plaintiff National Association of Letter Carriers who are presently covered by the Hatch Act and will continue to be covered after they become employees of the new Postal Service. In particular, the Commission has enforced or threatened enforcement and continues to enforce or threaten enforcement of these provisions of the Act with respect to the following types of activities which members of Plaintiff union have engaged in or presently desire to engage in:

a. Running in local elections for such offices as school board member, city council member or mayor.

b. Writing letters on political subjects to newspapers.

c. Participating as a delegate in a political convention and running for office in a political party.

d. Campaigning for candidates for political office.

18. Defendant Commission has additionally enforced or threatened enforcement and continues to enforce or threaten enforcement of the political management and political campaigning provisions of the Hatch Act against a wide range of political activities carried on by members of Plaintiff union in their capacities as officers or agents of Plaintiff union and its component local organizations. Such enforcement or threats of enforcement extend broadly to activities carried on by union members solely in a ministerial capacity. Such enforcement or threats of enforcement substantially hinder Plaintiff union in its efforts to fulfill its special responsibility to insure that governmental action affecting its membership is in their best interest and places Plaintiff union at a significant disadvantage in this regard when compared with other unions whose memberships are not restricted by the Hatch Act.

19. Plaintiff Democratic and Republican Committees have been and continue to be severely and adversely affected and disadvantaged by the enforcement and threats of enforcement of the political management and political campaigning provision of the Hatch Act against federal and state employees. In particular, Plaintiff Committees have been deterred and continue to be deterred from seeking desirable candidates who are Federal or state employees covered by the Hatch Act to run on the Democratic or Republican ticket for state and local offices. In addition, numerous individuals who would otherwise desire and be available to become members of Plaintiff Committees have been and continue to be deterred from doing so by said provisions of the Hatch Act. The general atmosphere of superstition and fear created by the political management and political campaigning provision of the Hatch Act has severely hindered Plaintiff Committees in their important responsibilities for fund raising and getting out the vote by deterring individuals from participating in political activities of any kind, including political donations and voting.

20. Plaintiff Hummel, an employee of an executive agency subject to the political management and political campaigning provisions of the Hatch Act, has desired in the past and continues to desire to engage in a wide variety of political activities prohibited him by these provisions, including (1) participation as a delegate in conventions of

a political party; (2) public endorsement of candidates of a political party for local, state and national office; (3) work at polling places on behalf of a political party during elections; (4) holding office in a political club. As a result of inquiries of the Civil Service Commission and his knowledge of the Hatch Act, Plaintiff Hummel is aware that such activities violate the Hatch Act. Solely because of fear of losing his job because of a violation of the Hatch Act, Plaintiff Hummel has refrained and continues to refrain from engaging in such activities.

21. Plaintiff Marie Pinho, as employee of an Executive agency subject to the political management and political campaigning provisions of the Hatch Act, presently desires to become a precinct Democratic Committee Woman in the Arlington County Democratic Committee. Solely because of her fear of losing her federal employment because of a violation of the Hatch Act, she has refrained from seeking this office and continues to refrain from doing so. Plaintiff Pinho desires to campaign for Democrat Harold O. Miller for United States Congressman from the Tenth District of Virginia and for Democrat William B. Spong for United States Senator from Virginia in the 1972 national elections, but is precluded from doing so solely because of fear that these activities will result in her loss of employment under the provisions of the Hatch Act.

22. Plaintiff Mandicino is now and was at all relevant times subject to the political management and political campaigning provisions of the Hatch Act. He has been and is active in the affairs of Plaintiff Union, including participation in the local AFL-CIO central body in Sioux City, Iowa. He is presently a member of the Executive Board of that body, and served as its President from 1965 to 1970. A primary purpose of the AFL-CIO central body is political action on behalf of union members, including campaigning and fund raising. As President of the AFL-CIO central body, Plaintiff Mandicino was compelled to engage in political activities prohibited by said provisions of the Hatch Act in order to carry out the responsibilities of his offices. He did engage in such activities including house-to-house campaigning for candidates of political parties, participation as a delegate in conventions of a political party, active participation in the affairs of a political party, and fund raising on behalf of political parties

and candidates. Plaintiff Mandicino has in the past and continues to be threatened with the possibility of the loss of his job because of such violations of the Hatch Act.

23. Plaintiff Ronald J. Wylie, on or about July 12, 1970, resigned from permanent employment as Director, Political and Legal Analysis Branch, National Center for Health Services Research and Development, Department of Health, Education and Welfare, a position in the competitive civil service, in order to run as a Republican candidate for the Maryland State Senate. Prior to his resignation, he had been a federal employee since 1963. During the period from or about July 11, 1970 until November 3, 1970, he was actively engaged campaigning as the Republican nominee for State Senator. During the same period, he was employed by the Department of HEW as a consultant on a part-time basis. He worked in this capacity on approximately thirty-five different days during the period. After he had been defeated in the November 3 election, Plaintiff Wylie sought to be reemployed by HEW on a permanent basis. In early December, 1970, he was informed by HEW personnel officer that, before he could be reemployed on a permanent basis, he would be required to sign a statement that, on the thirty-five days when he had served as a consultant, he did not engage in political management or political campaigning prohibited by the Hatch Act. Plaintiff Wylie refused to sign this statement. Directly and solely because of his refusal to sign such a statement, Plaintiff Wylie suffered a delay of approximately two and one-half months in securing reemployment on a permanent basis, which delay caused him loss of annual leave, sick leave, and retirement, health and life insurance benefits, and other monetary loss, and, in addition, severe mental anguish and suffering.

24. Plaintiff Gee is presently and has been at all relevant times subject to the political management and political campaigning provision of the Hatch Act. The election for office of Borough Councilman for his community, California, Pennsylvania, will be held in 1971; the primary is in May of 1971. The filing date for this office was March 9, 1971. The election for Councilman is a partisan election. Plaintiff Gee intended to and definitely would have filed for election to the office of Borough Councilman as an independent candidate had it not been for the Hatch Act. He did not file for election solely because of his fear that he would lose his job because of a violation of the Hatch Act. Plaintiff Gee pres-

ently continues to desire to run for election to the Council on a write-in basis, and definitely would do so were it not for his fear that he would lose his job because of a violation of the Hatch Act.

25. Plaintiff Myers is subject to the political management and political campaigning provisions of the Hatch Act. He presently desires to run as a Republican candidate in the 1971 partisan election for Mayor of West Lafayette, Indiana. The filing date for election is March 31, 1971, and the date of the primary is May 3, 1971. Plaintiff Myers was told by the Postmaster in Lafayette, Indiana that he would have to resign in order to run for election because of the Hatch Act. Plaintiff Myers definitely would file and run for the office of Mayor were it not for his fear that he would lose his job because of a violation of the Hatch Act.

26. The enforcement and threats of enforcement of the political management and political campaigning provisions of the Hatch Act by the defendants have exerted and continue to exert a chilling effect on the exercise of fundamental political freedoms by plaintiffs and those whom they represent.

27. The political management and political campaigning provisions of the Hatch Act, which defendants have enforced or threatened to enforce and continue to enforce or threaten to enforce against plaintiffs and members of the classes which they represent, are invalid and void under the Constitution of the United States for the following reasons:

a. Said provisions impinge on fundamental political rights of the plaintiffs in an overly broad manner and regulate conduct which is not subject to compelling governmental interest in violation of the rights of plaintiffs to freedom of speech, association, assembly, and petition under the First Amendment to the Constitution of the United States.

b. Said provisions regulate in an area of fundamental political rights in vague and imprecise terms in violation of the rights of plaintiffs to freedom of speech, association, assembly and petition under the First Amendment to the Constitution of the United States and in violation of the rights of plaintiffs to be free from deprivation of liberty without due process of law under the Fifth Amendment of the Constitution of the United States.

c. Said provisions effect invidious and unjustifiable discriminations between federal and state employees covered by the Act and governmental and private employees not covered by the Act in violation of the rights of plaintiffs to the equal protection of the laws under the Fifth Amendment to the Constitution of the United States.

28. Plaintiffs have no adequate remedy at law. Plaintiffs will suffer permanent and irreparable injury in the enjoyment of their Constitutionally-protected rights by the continued enforcement of the political management and political campaigning provisions of the Hatch Act.

RELIEF

WHEREFORE, Plaintiffs pray that:

1. A three-judge federal court be convened to hear and determine this case in accordance with the provisions of 28 U.S.C. 2282 and 2284.

2. This Court declare the provisions of law 5 U.S.C. 1502(a)(3) and 7324(a)(2) to be unconstitutional, invalid and void under the First and Fifth Amendments to the Constitution of the United States.

3. That each and all of the defendants be preliminarily and permanently enjoined from enforcing or executing or threatening enforcement of execution of the provisions of 5 U.S.C. 1502(a) and 7324(a)(2) against any and all of plaintiffs and the members of the classes which they represent.

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[Certificate of Service Omitted in Printing]

[Three-Judge Court]

POLITICAL ACTIVITY

of Federal Officers

and Employees

This pamphlet is a summary of laws and interpretations of laws which restrict political activity on the part of Federal employees and certain State and local employees. It is for persons who need a legal reference on this subject and is not intended to go beyond this basic purpose in content or distribution. Other Civil Service Commission issuances, which are more widely distributed, contain lists of permitted activities and urge employees to exercise their full rights as citizens. These issuances include Federal Employee Facts No. 2, "Political Activity—Rules for Federal Employees," and political activity posters, CSC Forms 1982 and 1982a.

U.S. CIVIL SERVICE COMMISSION

Pamphlet 20 • May 1966

Notice of Changes
in
Citations to Statutes

tember 6, 1966, the Hatch Political Activities Act and related laws evised and reenacted into a new title 5 of the United States Code.

ble below is for temporary reference in identifying former provisions law as they now appear in the new title 5. The revisions in 1966 t make any substantive changes in the law.

ch Act	Former Title 5	Title 5, United States Code, as revised
9(a) & (b)	118i	7324-25, 7327(a)
2	118k	1501-08 1/
4	118k-3	7324
5	1181	1501(5), 7324(a)(2)
6	118m	7327
8	118n	1503, 7326
1	118k-1	1501(4)(b), 7324(c)

.S.C. 1501-08 are the political activity provisions that apply to tain State and local employees.

lowing changes should also be noted:

: The following provision has been added to the Civil Service ions pertaining to the holding of State or local office by Federal es:

c. 734.204 Employees on leave without pay.
a) Subject to §734.205, a Federal employee who is on leave without pay may hold a State or local office on a full-time basis. The Federal employing agency is the sole judge of whether it is in its interest to grant leave without pay for the purpose of this paragraph.
b) An employee of a State or local government who is on leave without pay may hold a Federal position on a full-time basis under a temporary appointment."

The clause quoted under heading "Failure to Contribute or olitical Service not Prejudicial" now appears in the revised of the United States Code at section 7321.

CONTENTS

	Page
I. General Prohibitions and Exceptions	3
Civil Service Rule IV	3
Section 9 of the Hatch Act	3
Other sections of the Hatch Act	4
Statutes on related subjects	5
Individual responsibility	5
II. Jurisdiction of the Commission	5
Employees in the competitive service	5
Penalty provisions	6
Authority under Rule V	6
Commission procedure	7
III. Applicability of Rule and Statute	7
General statement	7
Groups of employees:	
Postmasters and post-office employees	8
Persons employed on an irregular or occasional basis	8
Temporary, part-time, and emergency employees	8
Employees on leave	8
Persons not subject to political-activity restrictions	9
IV. Prohibited Activities	10
Activity by indirection	10
Conventions	10
Primaries—caucuses	10
Meetings	10
Committees	10
Clubs and organizations	11
Civic organizations and citizens' associations	12
Contributions	12
Expression of opinions	12
Badges, buttons, pictures, and stickers	13
Newspapers—publication of letters or articles	13
Activity at the polls and for candidates	13
Election officers	14
Parades	15
Petitions	15
Candidacy for public office	15
V. Exceptions to Hatch Act Restrictions	16
Section 18	16
Section 16	16
VI. State Officers and Employees	18
VII. Federal Officers and Employees Holding State or Local Office by Appointment	19
VIII. Criminal Law Violations and Related Subjects	19
Political assessments:	
Solicitation of political contributions	20
Solicitation from benefit recipients	20
Furnishing list of benefit recipients	20
Circulars of solicitation bearing names of Federal employees	20
"Political assessments" defined	21
Solicitation or receipt of political contributions in Federal buildings	22
Letters addressed to Federal buildings	22
Letters delivered in Federal buildings	22
Discrimination on account of political contributions	23
Payment of political contributions by one employee to another	23
Political coercion:	
Intimidation and coercion of voters in elections of certain officers	23
Administrative employees of United States or any State: use of official authority to influence elections	23
Use of official authority in coercing voters	24
Political discrimination:	
Failure to contribute or render political service not prejudicial	24
Deprivation of employment, compensation, or other benefit	24
Prohibition against racial, political, or religious discrimination	24
Purchase and sale of public office:	
Offer to procure appointive public office	25
Acceptance or solicitation to obtain appointive public office	25
Promise of employment, compensation, or other benefit	25

More information about legal principles governing political activity, including case descriptions, is contained in *Hatch Act Decisions of the United States Civil Service Commission*, on sale by the Superintendent of Documents, Government Printing Office, Washington 25, D.C., for $1.50 a copy.

I. General Prohibitions and Exceptions

The broadest and most widely applicable restrictions on political activity of Federal officers and employees are contained in section 4.1 of Civil Service Rule IV and in section 9 (a)[1] of the Hatch Act. In practically the same words, these provisions prohibit the following:

(1) Using official authority or influence for the purpose of interfering with an election or affecting its results.

(2) Taking an active part in political management or in political campaigns.

CIVIL SERVICE RULE IV

Section 4.1 of Civil Service Rule IV reads as follows:

Prohibition against political activity.—No person employed in the executive branch of the Federal Government, or any agency or department thereof, shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No person occupying a position in the competitive service shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

SECTION 9 OF THE HATCH ACT

Section 9 of the Hatch Act (Hatch Political Activities Act of August 2, 1939, as amended; 5 U. S. C. 118i) reads as follows:

(a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws. The provisions of the second sentence of this subsection shall not apply to the employees of The Alaska Railroad, residing in municipalities on the line of the railroad, in respect to activities involving the municipality in which they reside.

(b) Any person violating the provisions of this section shall be removed immediately from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person: *Provided, however,* That the United States Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a lesser penalty shall be imposed by direction of the Commission: *Provided further,* That in no case shall the penalty be less than thirty days' suspension without pay: *And provided further,* That in the case of any person who has heretofore been removed from the service under the provisions of this section, the Commission shall upon request of said person reopen and reconsider the record in such case. If it shall find by a unanimous vote that the acts committed were such as to

[1] The United States Supreme Court, in an opinion (330 U. S. 75), affirmed a judgment of the District Court of the United States for the District of Columbia holding that the provisions of section 9 (a) of the Hatch Act were not unconstitutional.

warrant a penalty of less than removal it shall issue an order revoking the restriction against reemployment in the position from which removed, or in any other position for which he may be qualified, but no such revocation shall become effective until at least ninety days have elapsed following the date of the removal of such person from office.

(c) At the end of each fiscal year the Commission shall report to the President for transmittal to the Congress the names, addresses, and nature of employment of all persons with respect to whom action has been taken by the Commission under the terms of this section, with a statement of the facts upon which action was taken, and the penalty imposed.

OTHER SECTIONS OF THE HATCH ACT

Sections 15, 16, 18, and 21 of the Hatch Act also relate to political activity of Federal officers and employees.

Section 15 (5 U. S. C. A., sec. 118–l) states that the provisions in the act containing prohibitions against "taking any active part in political management or in political campaigns" are deemed to include activities prohibited by the civil-service rules. It reads as follows:

The provisions of this Act which prohibit persons to whom such provisions apply from taking any active part in political management or in political campaigns shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are at the time this section takes effect prohibited on the part of employees in the classified civil service of the United States by the provisions of the civil-service rules prohibiting such employees from taking any active part in political management or in political campaigns.

Sections 16, 18, and 21 set forth certain exceptions to the provisions prohibiting political activity.

Section 16 (5 U. S. C. A., sec. 118m) states an exception relating to political campaigns in localities adjacent to the National Capital or in localities where the majority of the voters are Government employees. It reads as follows:

Whenever the United States Civil Service Commission determines that, by reason of special or unusual circumstances which exist in any municipality or other political subdivision, in the immediate vicinity of the National Capital in the States of Maryland and Virginia or in municipalities the majority of whose voters are employed by the Government of the United States, it is in the domestic interest of persons to whom the provisions of this Act are applicable, and who reside in such municipality or political subdivision, to permit such persons to take an active part in political management or in political campaigns involving such municipality or political subdivision, the Commission is authorized to promulgate regulations permitting such persons to take an active part in such political management and political campaigns to the extent the Commission deems to be in the domestic interest of such persons.

Section 18 (5 U. S. C. A., 118n) states an exception relating to elections not specifically identified with National or State issues or political parties. It reads as follows:

Nothing in the second sentence of section 9 (a) or in the second sentence of section 12 (a) of this Act shall be construed to prevent or prohibit any person subject to the provisions of this Act from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection

with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party.

Section 21 (5 U. S. C. A., sec. 118k–l) states an exception relating to activities of employees of institutions and organizations of specified types. It reads as follows:

Nothing in sections 9 (a) or 9 (b), or 12 of this Act shall be deemed to prohibit or to make unlawful the doing of any act, by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any State or political subdivision thereof, or by the District of Columbia or by any Territory or Territorial possession of the United States; or by any recognized religious, philanthropic, or cultural organization.

STATUTES ON RELATED SUBJECTS

In addition to being subject to section 4.1 of Civil Service Rule IV, and to the sections of the Hatch Act quoted above, Federal officers and employees are subject to statutes relating to—

(1) Political assessments (see p. 20 of this pamphlet).
(2) Political coercion (see p. 23).
(3) Political discrimination (see p. 24).
(4) Purchase and sale of public office (see p. 25).

INDIVIDUAL RESPONSIBILITY

Each officer and employee is responsible for refraining from prohibited political activity. He is presumed to be acquainted with the legal provisions applicable to him, and his ignorance of them will not excuse a violation. If he is in doubt as to whether any particular activity is prohibited, he should present the matter in writing to the United States Civil Service Commission before engaging in the activity.

II. Jurisdiction of the Commission

EMPLOYEES IN THE COMPETITIVE SERVICE

There is no language in the Hatch Act that fixes responsibility for enforcement of the prohibitions against political activity of Federal officers and employees.

However, it is important to note that the prohibitive language of section 9 (a) of the Hatch Act is substantially the same as that of section 4.1 of Civil Service Rule IV. The Civil Service Commission's jurisdiction in political-activity matters was not affected by passage of the Hatch Act.

Section 15 of the Hatch Act provides that the activities that are prohibited by the act are those that the Commission had theretofore determined were prohibited, under the civil-service rules, on the part of employees in the competitive civil service.

Thus, under Civil Service Rule IV *and* under the Hatch Act, the Civil Service Commission has authority to enforce prohibitions against political activity of Federal officers and employees whose positions are in the competitive civil service.

(*Excepted Service.*—The employing agency has the responsibility of enforcing the restrictions against political activity in the cases of those employees occupying positions specifically excepted from the provisions of the Civil Service Act and Rules.)

PENALTY PROVISIONS

The Attorney General has held (40 A. G. 14) that where both the law and the rule are violated the statutory penalty is mandatory.

An officer or employee found to have violated the restrictions imposed by section 9 (a) of the Hatch Act and section 4.1 of Civil Service Rule IV must be immediately removed from the position or office held by him and—in accordance with a decision by the Comptroller General (25 Comp. Gen. 271)—may not be employed again in any position the salary or compensation of which is payable under the same appropriation as the position from which removed. This restriction is not limited to the appropriation act for any particular fiscal year.

If, however, the Commission determines by unanimous vote that the violation does not warrant removal, it may impose a lesser penalty under the terms of the amendment to the Hatch Act of August 25, 1950, but the penalty so imposed must be at least a 30-day suspension.

In an opinion of the Attorney General of September 12, 1947 (40 A. G. 545) it was held that the penalty provisions of the Hatch Act require the removal of an employee from the civil-service position or office that he is holding at the time his violation of the act is established, despite the fact that this position may be different from that held at the time the violation occurred. It is immaterial whether the second civil-service position has been obtained by transfer, promotion, or reappointment.

AUTHORITY UNDER RULE V.

Section 5.4 (a) of Civil Service Rule V reads as follows:

Whenever the Commission finds that any person has been appointed to or is holding a position in violation of the Civil Service Act, Rules or Regulations, or that any officer or employee in the executive branch has violated this order or any of the laws, rules or regulations administered by the Commission, it is authorized, after giving due notice and opportunity for explanation to the officer or employee and the agency concerned, to certify the facts to the proper appointing officer with specific instructions as to discipline or dismissal or other corrective actions.

Section 5.4 (c) of Civil Service Rule V reads as follows:

If the appointing officer fails to carry out the instructions of the Commission issued under Section 4 (a) of this Rule, the Commission shall certify the facts to the head of the agency concerned. If the head of the agency fails to carry out the instructions of the Commission within ten days after receipt thereof, the Commission shall certify the facts to the Comptroller General of the United States, and shall furnish a copy of such certification to the head of the agency concerned; and thereafter no payment shall be made of the salary or wages accruing to the employee concerned.

The General Accounting Office is without jurisdiction to review the determinations of the Civil Service Commission under Rule V and, upon certification by the Commission that an employee is holding a position in violation of the Civil Service Act and rules, the General Accounting Office has no alternative to withholding credit for payments made for salary or compensation (decision, Comptroller General July 20, 1939, to the Postmaster General).

COMMISSION PROCEDURE

In taking action on alleged violations of section 4.1 of Civil Service Rule IV and section 9 of the Hatch Act, the Civil Service Commission proceeds under regulations that provide for—

(1) Investigation of the complaint by representatives of the Commission and the employing agency.

(2) Issuance of charges, when there is prima facie proof of prohibited political activity, with a description of the specific charges and an opportunity to respond in writing.

(3) Issuance of an initial decision by the General Counsel with the right of appeal to the Commissioners.

(4) A hearing, unless waived by the employee with the concurrence of the General Counsel.

The Commission's procedure applies in the cases of those employees who resigned from their positions prior to a final determination by the Commission.

The Commission's regulations also provide for the reconsideration of the record, as authorized by law, upon request, of employees who were removed between August 2, 1939, and August 25, 1950, for established political-activity violations, to determine whether the violations were such as to warrant a penalty of less than removal.

III. Applicability of Rule and Statute

GENERAL STATEMENT

In the absence of specific statutory exemption, the basic political-activity restrictions apply to any person employed in the executive branch of the Federal Government, or any agency or department thereof, or in the government of the District of Columbia. Some persons are subject to these restrictions by virtue both of section 4.1 of Civil Service Rule IV and of section 9 (a) of the Hatch Act; others are

subject to them solely by virtue of section 9 (a) of the Hatch Act.

Section 4.1 of Civil Service Rule IV applies to all employees in the competitive service.

Section 9 (a) of the Hatch Act applies to all persons employed in the executive branch of the Federal Government [1] whether or not such persons are in the competitive service. The effect of section 9 (a) of the statute is to place the same restrictions upon the political activities of all officers and employees of the executive branch of the Government that section 4.1 of Civil Service Rule IV places upon the political activities of officers and employees in the competitive service.

Section 14 of the Hatch Act (5 U.S.C. 118–k–3) provides: "For the purposes of this Act, persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States, except that for the purposes of the second sentence of Section 9(a) the Commissioners and the Recorder of Deeds of the District of Columbia shall not be deemed to be officers or employees."

GROUPS OF EMPLOYEES

Postmasters and Post-Office Employees

All postmasters and acting postmasters, all employees in post offices of the first, second, and third classes, and all special delivery messengers in post offices of the first class are subject to the political-activity restrictions of Civil Service Rule IV and section 9 of the Hatch Act.

Persons Employed on an Irregular or Occasional Basis

Persons who are employed on an irregular or occasional basis, e.g., experts and consultants on a per diem basis, w.o.c. and w.a.e. employees, etc., are subject to the political activity restrictions of the Hatch Act while in an active duty status only and for the entire 24 hours of any day of actual employment. The employing agency has the duty of enforcement in the cases of those employees occupying positions in the excepted service.

Temporary, Part-time, and Emergency Employees

Temporary, part-time, and emergency employees are subject to the statute and the rule.

Employees on Leave

An employee who is subject to the basic political-activity prohibitions while on active duty is subject to them while on leave with pay, leave without pay, or furlough, and incurs the same penalties for an offense committed while in leave or furlough status as for an offense committed while on active duty. However, if lump-sum payment is made for accumulated annual leave and the person involved is on terminal leave, he is not subject to the political-activity restrictions during the period covered by the lump-sum payment or thereafter.

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[1] Except (a) the President and Vice President of the United States; (b) persons whose compensation is paid from the appropriation for the office of the President; (c) heads and assistant heads of executive departments; and (d) officers who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

It is not permissible for an employee to take leave of absence for the purpose of working with a political candidate, committee, or organization, or for the purpose of becoming a candidate for office with the understanding that he will resign his position if nominated or elected.

Persons Not Subject to Political-Activity Restrictions

The political-activity restrictions of section 9 of the Hatch Act and section 4.1 of Civil Service Rule IV do not apply to the following persons:

EXECUTIVE BRANCH

The President and Vice President of the United States.

Persons who are compensated from the appropriation for the Office of the President.

Heads and assistant heads of departments.

Officers who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

Ambassadors of the United States.

Ministers of the United States.

LEGISLATIVE BRANCH

Officers and employees of the legislative branch of the Federal Government, including secretaries and clerks of Members of Congress and congressional committees.

JUDICIAL BRANCH

Officers and employees of the judicial branch of the Federal Government, including United States Commissioners, clerks of United States courts, referees in bankruptcy, and their secretaries, deputies, and clerks.

DISTRICT OF COLUMBIA

The Commissioners of the District of Columbia.[3]

The Recorder of Deeds of the District of Columbia.[3]

OTHER

Officers or employees of any educational or research institution, establishment, agency, or system that is supported in whole or in part by any State or political subdivision, or the District of Columbia, or by any Territory or Territorial possession of the United States, or by any recognized religious, philanthropic, or cultural organization.

Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office, fee attorneys, inspectors, appraisers, and management brokers for the Home Owners' Loan Corporation and special fee attorneys for the Reconstruction Finance Corporation.

Persons who receive benefit payments, such as old-age assistance and unemployment compensation under the Social Security Act, rural-rehabilitation grants, and payments under the agricultural conservation program.

Persons retired from the Federal service, unless reemployed in the executive branch of the Federal Government.

Persons serving as star route and contract carriers and clerks in fourth-class post offices, provided such persons are not at the same time holding other Government employment.

Employees of the Alaska Railroad residing in municipalities on the line of the railroad in respect to activities involving the municipality in which they reside.[3]

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[3] Excepted only from the prohibition against active participation in political management or in political campaigns.

IV. Prohibited Activities

The Hatch Act is designed to prevent those subject to it from assuming general political leadership or from becoming prominently identified with any political movement, party, or faction, or with the success or failure of any candidate for election to public office.

The following sections are devoted to a discussion of activities that, prior to enactment of section 15 of the Hatch Act (see p. 2), the Civil Service Commission had determined to be activities prohibited by the civil-service rules.

ACTIVITY BY INDIRECTION

Any political activity that is prohibited in the case of an employee acting independently is also prohibited in the case of an employee acting in open or secret cooperation with others. Whatever the employee may not do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Employees are, therefore, accountable for political activity by persons other than themselves, including wives or husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation.

CONVENTIONS

Candidacy for or service as delegate, alternate, or proxy in any political convention or service as an officer or employee thereof is prohibited. Attendance as a spectator is permissible, but the employee so attending may not take any part in the convention or in the deliberations or proceedings of any of its committees, and must refrain from any public display of partisanship or obtrusive demonstration or interference.

PRIMARIES—CAUCUSES

An employee may attend a primary meeting, mass convention, caucus, and the like, and may cast his vote on any question presented, but he may not pass this point in participating in its deliberations. He may not act as an officer of the meeting, convention, or caucus, may not address, make motions, prepare or assist in preparing resolutions, assume to represent others, or take any prominent part therein.

MEETINGS

Service in preparing for, organizing or conducting a political meeting or rally, addressing such a meeting on any partisan political matter, or taking any part therein is prohibited.

COMMITTEES

The holding of the office of precinct committeeman, ward committeeman, etc., or service on or for any committee of a political party

organization is prohibited. An employee may attend any meeting of a political committee to which the general public is admitted but must refrain from activity as indicated in the preceding paragraphs.

Whether a committee has an ultimate political purpose determines whether an employee may properly serve as a member. An employee may be assigned to duties that, considered alone, seem far removed from active politics; but those duties may assume an active political character when considered as part of the whole program. The Commission has held that service by an employee as chairman of a food committee at an occasion signifying the opening campaign speech of a nominee for Governor of a State is not permissible. No attempt can be made to differentiate between workers on or under political committees with respect to the degree to which they are politically active.

CLUBS AND ORGANIZATIONS

Employees may be members of political clubs, but they may not be active in organizing such a club, be officers of the club or members or officers of any of its committees, or act as such, or address a political club on any partisan political matter. Service as a delegate or alternate from such a club to a league of political clubs is service as an officer or representative of a political club and is prohibited, as is service as a delegate or representative of such a club to or in any other organization. In other words, an employee may become a member of a political club and may vote on questions presented but may not take an active part in its management or affairs, and may not represent other members or attempt to influence them by his actions or utterances.

Section 6 of the act of August 24, 1912 (37 Stat. 555), provides in part—

> That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof, shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service.

Active participation in the activities of a labor union by employees subject to the Hatch Act is not prohibited, where the organization is nonpartisan in character and has as its primary object improvements in the conditions of labor. Matters concerned solely with organization and management of a union of Federal employees are not political management or political activity in violation of section 9(a) of the Hatch Act, and adoption of a resolution limited to these matters would not violate the law. However, a Federal employee who engages in prohibited political activity under the direction or suggestion of a union local will be held personally accountable irrespective of whether he is acting as an individual or as a member of a group, including a union local.

Civil-service employees may hold office in organizations established for social betterment. It is pointed out, however, that in certain circumstances activities of such organizations may take on a character of partisan political activity. Employees who become members or officers of organizations of this type must take the responsibility for seeing that the activities in which they engage do not become partisan in character.

CIVIC ORGANIZATIONS AND CITIZENS' ASSOCIATIONS

Activity in organizations having for their primary object the promotion of good government or the local civic welfare is not prohibited by the act of August 2, 1939, as amended, provided such activities have no connection with the campaigns of particular candidates or parties.

CONTRIBUTIONS

Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures, subject to the limitation laid down in section 608, title 18, U. S. Code. The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

While employees may make contributions, they may not solicit, collect, receive, disburse, or otherwise handle contributions made for political purposes. Employees may not be concerned directly or indirectly in the sale of dinner tickets of a political party organization or in the distribution of pledge cards soliciting subscriptions to the dinners.

Voluntary contributions may be made at any time, so long as they are not made to another Federal officer or employee.

It is not permissible for a Federal administrative official to furnish the names of his personnel and their addresses for the purpose of political solicitation.

In addition, certain sections of the Criminal Code place restrictions on contributions by Federal employees. As stated above, contributions may not be handed over to another person in the Federal service; they may not be solicited in a Federal building by any person, whether or not in the Federal service; etc. For the text of these sections of the criminal code and further information on this matter, see part VIII, pages 19 through 25 These sections of the criminal code are within the jurisdiction of the Department of Justice, and the law provides severe penalties for violations.

EXPRESSION OF OPINIONS

Although the act reserves to employees affected the right to "express their opinions on all political subjects and candidates," this reservation is subject to the prohibition that employees may not take any active part in political management or in political campaigns.

Public expression of opinion in such a way as to constitute taking an active part in political management or in political campaigns is accordingly prohibited.

BADGES, BUTTONS, PICTURES, AND STICKERS

Employees may not distribute campaign literature, badges, or buttons. They are not prohibited from wearing political badges or buttons or from displaying political posters or pictures in the windows of their homes or on their automobiles.

NEWSPAPERS—PUBLICATION OF LETTERS OR ARTICLES

An employee may not publish or be connected editorially or managerially with any newspaper generally known as partisan from a political standpoint, and may not write for publication or publish any letter or article, signed or unsigned, soliciting votes in favor of or against any political party, candidate, or faction. An employee who writes such a letter or article is responsible for any use that may be made of it whether or not he gives consent to such use.

The Commission has held that as a general rule a newspaper that is considered as being partisan from a political standpoint, either during the campaign or in the interval between campaigns, is regarded as being subject to application of the restrictions against activity in connection therewith. It is not required that a publication be regarded as the organ of a political organization or that it have an official connection with any political organization or party. The words "editorially" and "managerially" are intended to apply to responsibilities and duties that have to do with the making of decisions affecting the editorial policies. The objective behind the restriction on activity in connection with such publications or newspapers is prohibition of political activity of a partisan character through the medium of the public press by a person subject to the statute and the rule.

Whether or not ownership of stock or membership on a board of directors of a corporation that publishes a daily newspaper is a violation of the political-activity restrictions will depend upon the degree to which the individual, by virtue of such ownership or membership, participates in controlling the editorial policy or news management of the publication. If a Federal employee makes decisions or assists in making decisions on editorial policy or news management with respect to the political status of the publication, a violation of the restrictions occurs, but mere ownership of stock would not of itself constitute a violation of the political-activity restrictions.

There is no direct prohibition against correspondence work by an employee for newspapers. The employee will have the responsibility, however, of ascertaining that any material he submits is not in contravention of the restrictions.

ACTIVITY AT THE POLLS AND FOR CANDIDATES

An employee has the right to vote as he pleases, and to exercise this right free from interference, solicitation, or dictation by any fellow

employee or superior officer or any other person. It is a violation of the Federal Corrupt Practices Act to pay or offer to pay any person for voting or refraining from voting, or for voting for or against any candidate for Senator or Representative in, or Delegate or Resident Commissioner to, Congress. It is also a violation of the law to solicit, receive, or accept payment for one's vote or for withholding one's vote. (See U. S. Code, title 18, sec. 597.)

Under the act of August 2, 1939, it is a criminal offense for any person to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote as he may choose in any election of a National character. It is also a criminal offense to promise any employment, position, work, or compensation, or other benefit made possible by an act of Congress, as a consideration, favor, or reward for political activity or for the support of or opposition to any political candidate or party.

An employee subject to the law must avoid any offensive activity at primary and regular elections. He must refrain from soliciting votes, helping to get out the voters on election days, acting as the accredited checker, watcher, or challenger of any party or faction, or any other partisan political activities at the polls. Rendering partisan political service, such as transporting voters to and from the polls and candidates on canvassing tours, whether for pay or gratuitously, is held to be within the scope of prohibited political activities. This is not intended to prohibit one subject to the act from transporting members of his immediate family to and from the polls, in view of the community of interest that exists in such cases. The foregoing provisions do not apply if the election in question is covered by the exceptions embodied in section 18 of the law of August 2, 1939, as amended. (See p. 16.)

The publication or distribution of election campaign statements not containing names of persons responsible therefor is prohibited by law. The United States Code, title 18, section 612, reads as follows:

> Whoever wilfully publishes or distributes or causes to be published or distributed, or for the purpose of publishing or distributing the same, knowingly deposits for mailing or delivery or causes to be deposited for mailing or delivery, or, except in cases of employees of the Post Office Department in the official discharge of their duties, knowingly transports or causes to be transported in interstate commerce any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek the office of President, or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to Congress, in a primary, general, or special election, or convention of a political party, or has caused or permitted his intention to do so to be publicly declared, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the names of the officers of each such association, committee, or corporation, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

ELECTION OFFICERS

A Federal employee may serve as an election officer provided that in so doing he discharges the duties of the office in an impartial manner

as prescribed by State or local law, except that he may not become a candidate for such office in a partisan election.

PARADES

An employee may not participate in or help organize a political parade. An employee may be a member of a band or orchestra that takes part in parades or rallies provided such band or orchestra is generally available for hire as a musical organization.

PETITIONS

The first amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." Section 6 of the act of August 24, 1912 (37 Stat. 555), provides that "the right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any Committee or Member thereof, shall not be denied or interfered with."

An employee subject to the law of August 2, 1939, as amended (the Hatch Act), is permitted to sign a nominating petition in behalf of a partisan candidate. He may not initiate such petitions or canvass for the signatures of others.

CANDIDACY FOR PUBLIC OFFICE

Candidacy for nomination or for election to a National, State, county, or municipal office is not permissible. The prohibition against political activity extends not merely to formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. An employee may not solicit others to become candidates for nomination or for election to such an office.[1]

The Attorney General held in an opinion to the Secretary of the Interior dated April 17, 1940 (39 Op. Atty. Gen. 423), that the Hatch Act does not apply to the acceptance and holding of a local office to which an employee was elected without being a candidate, his name not appearing on the ballot but being written in by voters. However, the Commission interprets this opinion as applicable only in cases where the writing in of an employee's name is a spontaneous action on the part of the voters and does not come about as a result of prearrangement whereby the employee was in effect a candidate before the vote was cast.

This decision is authority for the statement that the mere holding of a public office is not in itself a violation. (See also Attorney General's Circular No. 3301, October 26, 1939.)

[1] For exceptions, see "V. Exceptions to Hatch Act Restrictions," pp. 16-18.

However, it should be noted that membership on a political committee is not a public office, within the meaning of the foregoing, even though held by election as a political representative of a ward, precinct, county, or of the voting subdivision of a State. The holding of such political offices is prohibited.

V. Exceptions to Hatch Act Restrictions

The Hatch Act specified two conditions under which political activity on the part of Federal officers and employees is permissible.

(1) Section 18 of the act sets forth an exception relating to elections not specifically identified with National or State issues or political parties.

(2) Section 16 of the act sets forth an exception relating to political campaigns in communities adjacent to the District of Columbia or in communities the majority of whose voters are employees of the Federal Government.

Both sections are quoted on page 4 of this pamphlet.

SECTION 18

To be permissible under section 18, the activity must be of a strictly local character—completely unrelated to issues and candidates that are identified with National and State political parties.

SECTION 16

For many years prior to enactment of the Hatch Act, Federal employees residing in certain municipalities near the District of Columbia were permitted to be candidates for, and to hold, local office in those municipalities.

The permission was granted either by an individual Executive order or by action of the Commission based on an Executive order, and it remained in full force and effect until the passage of the act of August 2, 1939, which prohibited active participation in political management or in political campaigns, without exception. When this act was amended by the act of July 19, 1940, a new section was added (section 16, 54 Stat. 767) whereby the Commission was authorized to promulgate regulations extending the privilege of active participation in local political management and local political campaigns to Federal employees residing in any municipalities or other political subdivisions of the States of Maryland and Virginia in the immediate vicinity of the District of Columbia or in municipalities the majority of whose voters are employed by the Government of the United States.

The Commission has promulgated regulations governing the extension of the privileges set forth in the section quoted above and copies of these regulations are available upon request to the Commission's central office in Washington, D. C. Under these regulations it is necessary that a formal request be received from the representatives of the community involved and that the petitioners furnish certain specified information relative to their community and its elections. In all cases

the final decision as to the extension of the privileges of section 16 to any individual municipality depends on the municipality's meeting certain prerequisites that are set forth in the Commission's regulations.

The Commission has extended the privileges allowed by section 16 of the Hatch Act to the following municipalities or political subdivisions by formal action recorded on the dates indicated:

In Maryland

Annapolis (May 16, 1941).
Berwyn Heights (June 15, 1944).
Bethesda (Feb. 17, 1943).
Bladensburg (Apr. 20, 1942).
Bowie (Apr. 11, 1952).
Brentwood (Sept. 26, 1940).
Capitol Heights (Nov. 12, 1940).
Cheverly (Dec. 18, 1940).
Chevy Chase, sections 1 and 2 (Mar. 4, 1941).
Chevy Chase, section 3 (Oct. 8, 1940).
Chevy Chase, section 4 (Oct. 2, 1940).
Martin's Additions 1, 2, 3, and 4 to Chevy Chase (Feb. 13, 1941).
Chevy Chase View (Feb. 26, 1941).
College Park (June 13, 1945).
Cottage City (Jan. 15, 1941).
District Heights (Nov. 2, 1940).
Edmonston (Oct. 24, 1940).
Fairmont Heights (Oct. 24, 1940).
Forest Heights (Apr. 22, 1949).
Garrett Park (Oct. 2, 1940).
Glenarden (May 21, 1941).
Glen Echo (Oct. 22, 1940).
Greenbelt (Oct. 4, 1940).
Hyattsville (Sept. 20, 1940).
Kensington (Nov. 8, 1940).
Landover Hills (May 5, 1945).
Montgomery County (Apr. 30, 1964).
Morningside (May 19, 1949).
Mount Rainier (Nov. 22, 1940).
North Beach (Sept. 20, 1940).
North Brentwood (May 6, 1941).
North Chevy Chase (July 22, 1942).
Northwest Park (Feb. 17, 1943).
Prince Georges County (June 19, 1962).
Riverdale (Sept. 26, 1940).
Rockville (Apr. 15, 1948).
Seat Pleasant (Aug. 31, 1942).
Somerset (Nov. 22, 1940).
Takoma Park (Oct. 22, 1940).
University Park (Jan. 18, 1941).
Washington Grove (Apr. 5, 1941).

In Virginia

Alexandria (Apr. 15, 1941).
Arlington County (Sept. 9, 1940).
Clifton (July 14, 1941).
Fairfax County (Nov. 10, 1949).
Town of Fairfax (Feb. 9, 1954).
Falls Church (June 6, 1941).
Herndon (Apr. 7, 1945).
Vienna (Mar. 18, 1946).
Portsmouth (Feb. 27, 1958).

Other Municipalities

Bremerton, Wash. (Feb. 27, 1946).
Port Orchard, Wash. (Feb. 27, 1946).
Elmer City, Wash. (Oct. 28, 1947).
Anchorage, Alaska (Dec. 29, 1947).
Benicia, Calif. (Feb. 20, 1948).
Warner Robins, Ga. (Mar. 19, 1948).
Sierra Vista, Ariz. (Oct. 5, 1955).
New Johnsonville, Tenn. (Apr. 26, 1956).
Huachuca City, Ariz. (Apr. 9, 1959).

The Commission's actions extending the privileges of active participation in local self-government of the above-listed communities to resident Federal officers and employees are subject to the following restrictions:

(1) Federal officers and employees in the exercise of these privileges must not neglect their official duties and must not engage in nonlocal partisan political activities.

(2) Federal officers and employees must not run for local office as candidates representing a political party or become involved in political management in connection with the campaign of a party candidate for office.

(3) Federal officers and employees who are candidates for local elective office must run as independent candidates.

(4) Federal officers and employees elected or appointed to local offices requiring full-time service must resign their positions with the Federal Government. If elected or appointed to offices requiring only part-time service they may accept and hold the same without relinquishing their Federal employment provided the holding of such part-time office does not conflict or interfere with their duties as officers or employees of the Federal Government. The department or independent agency in which Federal officers or employees are employed is the sole judge of whether or not the holding of the local office conflicts or interferes with their official duties as officers or employees of the Federal Government.

(5) The permission granted by the Commission to any particular community may be suspended or withdrawn by the Commission when in its opinion the activities resulting therefrom are or may become detrimental to the public interest or inimical to the proper enforcement of the political-activity law and rules.

VI. State Officers and Employees

This publication deals primarily with the political-activity restrictions applicable to Federal officers and employees. However, it should be mentioned that there are other provisions of the so-called Hatch Act that apply Federal political-activity restrictions to those officers and employees of a State, or local agency of a State, whose principal employment is in connection with an activity financed in whole or in part by Federal loans or grants. These restrictions are also enforceable by the United States Civil Service Commission. The following rule of jurisdiction has been adopted by the Commission in these cases:

> An officer or employee of a State or local agency is subject to the Act if, as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants; otherwise he is not.

The restrictions applicable to State or local agency officers and employees falling within the scope of this rule of jurisdiction prohibit the following:

(1) Use of official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof.

(2) Directly or indirectly coercing, attempting to coerce, commanding, or advising any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes.

(3) Active participation in political management or in political campaigns.

The first two restrictions are self-explanatory and the third covers the same activities that are described in part IV of this pamphlet.

VII. Federal Officers and Employees Holding State or Local Office by Appointment

By virtue of the provisions of the Act of October 31, 1951 (3 U.S.C. 301, 302), Executive Order No. 10530, as amended, and Rev. Stat. sec. 1753 (5 U.S.C. 631) the Commission on December 21, 1956, issued the following general regulation applicable to officers and employees in all departments and agencies:

Full-time Federal employees may hold positions under a State or local government on other than a full-time basis; and

Federal employees employed on other than a full-time basis may hold positions under a State or local government, whether full-time or otherwise; provided that the Federal agency determines in advance that the holding of the State or local office will not interfere with the regular and efficient discharge of an employee's Federal duties. (21 F. R. 10365.)

VIII. Criminal Law Violations and Related Subjects

In addition to being restricted by the act of August 2, 1939 (as amended), civil-service rules, Executive orders, and departmental regulations, the freedom of officers and employees of the executive civil service to engage in politics is limited by a number of statutes. These statutes are generally applicable to all officers and employees of the United States, whether or not in the competitive service, and, in some cases, the language of the statute is sufficiently broad to include any person receiving compensation for services from money derived from the Treasury of the United States, and other persons. These statutes are set forth in the following sections. Some of the activities prohibited under penalty of fine and imprisonment are:

(1) Solicitation or receipt of political contributions by one officer or employee from another.

(2) The giving or handing over of a political contribution by one employee to another.

(3) Solicitation or receipt of political contributions in a Federal building by any person, whether or not an employee of the Government.

(4) Solicitation or receipt by any person of political contributions from any person receiving any benefit under any act of Congress appropriating funds for relief.

(5) Solicitation or receipt of any thing of value, either for personal reward or as a political contribution, in return for the promise to use, or the use of, influence to secure an appointive office under the United States.

(6) Payment or the offer of payment for the use of influence in securing appointive office under the United States.

(7) Promising employment, compensation, or other benefit made possible by act of Congress as consideration or reward for political activity.

(8) Discrimination by an officer or employee in favor of, or against, another officer or employee on account of political contributions.

(9) Depriving any person on account of race, creed, color, or political activity, of compensation or other benefit made possible by any act of Congress appropriating funds for relief.

(10) Disclosure for political purposes of any list or names of persons receiving benefits under an act of Congress appropriating funds for relief and the receipt of such a list or names for political purposes.

POLITICAL ASSESSMENTS

Solicitation of Political Contributions

The United States Code, title 18, section 602, reads as follows:

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Solicitation From Benefit Recipients

The United States Code, title 18, section 604, reads as follows:

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Furnishing List of Benefit Recipients

The United States Code, title 18, section 605, reads as follows:

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Circulars of Solicitation Bearing Names of Federal Employees

In an opinion of October 17, 1902 (24 Op. 133), the Attorney General held that the sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in Congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the Civil Service Act (now sec. 602, title 18, of the U. S. Code), which declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for

any political purpose whatever from any officer or employee of the United States. The statute unquestionably condemns all such circulars, notwithstanding the particular form of words adopted, in order to show a request rather than a demand, and to give the responses a quasi-voluntary character.

"Political Assessments" Defined

The following is an extract from the decision in *United States* v. *Scott* (74 Fed. 213), in the Circuit Court of the District of Kentucky, rendered October 7, 1895, by Taft, J.:

To charge a man with soliciting a contribution from United States officers for a political purpose carries with it by implication a charge that the accused knew the purpose for which the contribution was solicited. The words "for a political purpose" may reasonably be construed to qualify not only the contribution but the solicitation. Similarly, to charge that a man received from another his contribution for a political purpose, by implication charges that the reception was for the same purpose as the contribution. * * * Nor was it necessary to set out the specific averment that the defendant knew that the persons from whom the contributions were received were officers of the United States.

The following extract is from the decision rendered by McCall, J., in the case of *United States* v. *Dutro*, *L. W.*, 1913, Western District of Tennessee (unreported):

The statute under which the indictment was found prohibits (and I shall speak of this concrete case) the postmaster at Memphis, Tenn., from receiving, or being in any manner concerned in receiving, any assessment, subscription, or contribution for any political purpose whatever from any official, clerk, or employee of the United States.

There are four counts in the indictment. Two of them charge the defendant with receiving subscriptions and contributions for political purposes from an officer, clerk, or employee of the United States, and two of them charge defendant with being concerned in receiving such assessment or subscription for political purposes from a clerk or employee of the United States.

Evidently one of the purposes of Congress in enacting the legislation was to prohibit superior officers from bringing pressure to bear upon their subordinates in order to secure contributions for campaign purposes, and the act is couched in very broad terms.

This evidence (which so far is uncontradicted) shows that the defendant, Mr. Dutro, did receive two contributions for campaign purposes from an officer or clerk or employee of the United States. Whatever may have been Mr. Dutro's frame of mind in regard to his connection with it, the one fact remains, as the evidence shows, that he received these contributions for the purposes and from the parties which the law prohibits. Perhaps and no doubt he did so without any thought that he was violating any statute, and felt that he was acting purely as a conveyor of these contributions to the political parties for whom they were intended, to accommodate those who were making the contributions, and purely as a personal matter, but I think under the evidence his action was in violation of the statute.

The other two counts, as I have pointed out, charge the defendant with being concerned in receiving assessments, subscriptions, or contributions for campaign purposes from a clerk, employee, or officer of the United States. There is a controversy here between counsel as to what the word "concerned" means. From what the law books say which have been read here, and from my own impression, it seems that the word "concerned" means to be interested in, or take part in, receiving such contributions. If Mr. Dutro, by his connection with these two subscriptions, took a part in the contributions being made by employees of the Government for campaign purposes, he would be guilty. I think the natural construction of the phrase or term or word necessarily leads to the conclusion that he did take a part in

receiving the contributions, because he received and conveyed them from the contributors to the parties for whom they were intended, and, as the proof so far shows, he knew that the parties who were making the contributions were clerks under him in the Post Office Department, and he knew the purpose for which the money was to be used and where it was to go.

The foregoing case definitely establishes the principle that an employee of the Government who receives a political contribution from another such employee as a mere agent or messenger for the purpose of turning it over to a political organization commits a violation of the statute.

Solicitation or Receipt of Political Contributions in Federal Buildings

The United States Code, title 18, section 603, reads as follows:

Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in section 602 of this title, or in any navy yard, fort, or arsenal, solicits or receives any contribution of money or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Letters Addressed to Federal Buildings

The Commission by a minute of March 23, 1897, held that addressing a letter to a Government employee in a Government building soliciting political contributions is a solicitation in that building, but notwithstanding numerous violations no opportunity arose of having the question judicially determined until 1907, when an indictment was obtained against Edward S. Thayer at Dallas, Tex. A demurrer to the indictment was sustained on the ground that the act required the personal presence in the Government building of the solicitor. Appeal was taken to the Supreme Court, and the judgment of the lower court was reversed. (*United States* v. *Thayer*, 209 U. S. 39.) The opinion of the Court, delivered by Justice Holmes on March 9, 1908, establishes definitely the proposition that solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of this section, the solicitation taking place where the letter was received. (See also *United States* v. *Smith*, 163 Fed., 926, where the letter was personally delivered.)

Letters Delivered in Federal Buildings

The act of sending through the mails letters to Government employees soliciting political contributions, their street or home address being omitted from the envelopes, with the result that the letters are delivered by the postal authorities in the Government building in which they are employed, may constitute a violation of section 603 of title 18 of the United States Code. It is a maxim of law that a person is presumed to intend the natural and probable consequences of his acts, and failure or omission to take measures to avoid delivery of such letters in a Government building will render the offender liable to prosecution.

Discrimination on Account of Political Contributions

The United States Code, title 18, section 606, reads as follows:

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Payment of Political Contributions by One Employee to Another

The United States Code, title 18, section 607, reads as follows:

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

POLITICAL COERCION

Section 2, clause second, of the Civil Service Act directs that the civil-service rules "shall provide and declare as nearly as the conditions of good administration will warrant, as follows: * * * Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body." In pursuance of this section, Civil Service Rule IV, section 4.1, provides, in part, that "Persons in the executive branch * * * shall not use their official authority or influence for the purpose of interfering with an election or affecting the result thereof." This provision applies to all persons in the executive civil service, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.

Intimidation and Coercion of Voters in Elections of Certain Officers

The United States Code, title 18, section 594, reads as follows:

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and Possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Administrative Employees of United States or Any State—Use of Official Authority To Influence Elections

The United States Code, title 18, section 595, reads as follows:

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia, or by any agency or instrumentality thereof, or by any State, Territory, or Possession

of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Resident Commissioner from any Territory or Possession, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any State or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic, or cultural organization.

Use of Official Authority in Coercing Voters

The United States Code, title 18, section 598, reads as follows:

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

POLITICAL DISCRIMINATION

Failure To Contribute or Render Political Service Not Prejudicial

Section 2, clause second, of the Civil Service Act reads as follows:

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Deprivation of Employment, Compensation, or Other Benefit

The United States Code, title 18, section 601, reads as follows:

Whoever, except as required by law, directly or indirectly, deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Prohibition Against Racial, Political, or Religious Discrimination

Section 4.2 of Civil Service Rule IV reads as follows:

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be

exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation or religious beliefs, except as may be authorized or required by law.

PURCHASE AND SALE OF PUBLIC OFFICE

Offer To Procure Appointive Public Office

The United States Code, title 18, section 210, reads as follows:

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Acceptance or Solicitation To Obtain Appointive Public Office

The United States Code, title 18, section 211, reads as follows:

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever solicits or receives anything of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

Promise of Employment, Compensation, or Other Benefit

The United States Code, title 18, section 600, reads as follows:

Whoever, directly, or indirectly, promises any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

[Title and Addressees Omitted in Printing]

PLAINTIFF'S INTERROGATORIES TO DEFENDANT CIVIL SERVICE COMMISSION (SET NO. 1)

The Plaintiff's request that the defendant Civil Service Commission answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1.0. Unless otherwise specified or obvious from the context, as used throughout these interrogatories, the word "act" or "acts" has the same meaning as the word "acts" in 5 U.S.C. § 7324(a)(2). As used herein "statute" refers to 5 U.S.C. §§ 1502(a)(3) and 7324(a)(2).

1.1. List with specificity each and every act of political management or campaigning which was prohibited "on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President."

1.2. Is each act listed in response to question 1.1 prohibited by the statute as presently interpreted by the Civil Service Commission?

1.2.1. If the answer to question 1.2 is "no", then specify which of the listed acts are no longer deemed prohibited?

1.2.2. Under what authority did the Commission determine that these acts were permissible after having determined them impermissible prior to July 19, 1940?

1.3 Is it the position of the Civil Service Commission that the statute requires that each and every act listed in response to question 1.1 be prohibited?

1.3.1. If the answer to question 1.3 is "no", then which of these acts are permissible under the current view of the Commission?

1.3.2. Are there presently certain circumstances which lead the Commission to this judgment, which circumstances did not obtain when said acts were initially prohibited?

1.3.3. If so, what are these circumstances and why do they compel a reversal of the Commission's original judgment?

2.0. As used in questions 2.1 through 2.9.7, the word

"determination" or "determinations" has the same meaning as the word "determinations" in 5 U.S.C. §§ 7324(a)(2) and 1501(5). As used in questions 2.1 through 2.9.7, the word "rule" or "rules" refers to the "rules prescribed by The President" referred to in 5 U.S.C. § 7324(a)(2).

2.1. How many "determinations" did the Commission make under the rules prescribed by The President prior to July 19, 1940?

2.1.2. What was the date of the first such determination?

2.2. List with specificity each and every such "determination", giving a description sufficient for use in a subpoena.

2.3. What, if any, indexing system is available to the Commission and its staff in referencing these "determinations"?

2.4. How are these "determinations" made available to the general public?

2.5. How are these "determinations" made available to employees within the ambit of 5 U.S.C. § 7324 or 5 U.S.C. § 1502?

2.6. When an employee (as defined in 2.5) asks the Commission for advice as to whether a specific act is prohibited or permitted under the Act, does the Commission render an opinion?

2.6.1. Is it the Commission's general policy to include a citation to a particular determination or determinations in such opinions?

2.6.2. Has any such opinion ever specifically referred to a "determination?"

2.6.3. If not, does the Commission, as a matter of internal policy, have any routine method of relating each such opinion to a determination?

2.6.4. If not, upon what basis are the opinions written?

2.7. In the following cases, the Commission indicated that it had searched the pre-July 19, 1940 "determinations" but finding none sufficiently in point rendered in each case decisions favorable to the respondents: *John N. Cawley*, Dkt. No. 1247, (Dec. 29, 1949); *Herbert S. Reed*, Dkt. No. 1204 (Aug. 4, 1947); and *Nell W. Floyd*, Dkt. 1149 (Feb. 7, 1947). Were these determinations based upon a view of the Commission that only specific activities which were determined prior to July 19, 1940 to be prohibited "active par-

ticipation in political management or political campaigns" can be so determined after July 19, 1940?

2.7.1. If so is this the Commission's view today?

2.7.2. State all the pertinent facts in each of the foregoing determinations, or, in the alternative, furnish a copy of each determination.

2.8. Is the decision of the Commission in *Archie B. Cole*, File No. 47-3057 (June 8, 1932) a binding determination within the meaning of the Act?

2.8.1. What specific act or acts does that determination prohibit?

2.8.2. Does the Commission today deem those specific acts to be prohibited by the statute?

2.8.3. If the answer to question 2.8 is "no", then by what procedure was the case referred to in question 2.8 overruled?

2.8.4. Does the Commission contend that participating in meetings of the Watch Tower Bible and Tract Society is an act prohibited by the statute?

2.8.5. Does the Commission contend that circulation of literature devoted, in large part, to vigorous criticism of our Governments, statesmen, financiers, etc., as well as other Governments, and the Churches and Clergy in general is an act prohibited by the statute?

2.8.6. If "no" to 2.8.4 and 2.8.5 was not the *Cole* determination referred to in question 2.8 enacted into law by the statute?

2.9. How many determinations has the Civil Service Commission made after July 19, 1940, pursuant to 5 U.S.C. § 7324(a)(2), to the effect that a given act was an "impermissibly 'active part in political management or political campaigning'?"

2.9.1. List with specificity each and every such "determination" giving a description sufficient for use in a subpoena.

2.9.2. Do the "determinations" referred to in question 2.9 prohibit any acts not prohibited by the "determinations" referred to in question 2.1?

2.9.3. If so, list with specificity each and every such act.

2.9.4. If so, upon what authority were such acts prohibited?

2.9.5. With respect to the "determinations" referred to in question 2.9, what, if any, indexing system is available

to the Commission and its staff in referencing these "determinations?"

2.9.6. How are these "determinations" made available to the general public?

2.9.7. How are these "determinations" made available to employees (as defined in question 2.5)?

3.0 5 C.F.R. 733.122 specifically designates thirteen (13) activities as prohibited acts of political management or campaigning. The regulation also points out that the activities prohibited "are not limited to" those listed in the regulation. As used herein the word "regulation" shall refer to 5 C.F.R. 733.122.

3.1. Pursuant to what authority has the Commission promulgated the regulation?

3.2. List with specificity each and every act that is prohibited by the statute but which is not included in subsection (b)(1) through (b)(13) of the regulation?

3.3. Is the application of paragraph (a) of the regulation limited by the determinations of the Commission prior to July 19, 1940 as referred to in question 2.2?

3.3.1. Is the application of paragraph (a) of the regulation limited to the acts of political management or campaigning listed in response to question 1.1?

3.3.2. Is the application of paragraph (a) of the regulation limited to the acts of political management or campaigning specifically prohibited in Civil Service *Pamphlet 20* of 1966?

3.4. How can an employee (as defined in question 2.5) determine which activities, other than those specifically enumerated in the regulation, are prohibited by the regulation?

3.5. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found serving as an officer of a political party to be an impermissibly "active part in political management or in political campaigns."

3.5.1. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found serving as a member of a national, state or local committee of a political party to be an impermissibly "active part in political management or in political campaigns."

3.6. Identify by case name, file number and docket num-

ber, any and all pre-July 19, 1940 "determinations" of the Commission which found being an officer or a member of a committee or a member of a partisan political club to be an impermissibly "active part in political management or in political campaigns."

3.7. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found organizing or reorganizing a political party, organization or political club to be an impermissibly "active part in political management or in political campaigns."

3.8. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found directly or indirectly soliciting, receiving, collecting, handling, disbursing or accounting for assessments, contributions or other funds for partisan political purpose to be an impermissibly "active part in political management or in political campaigns."

3.9. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a partisan candidate, political party or political club to be an impermissibly "active part in political management or in political campaigns."

3.10. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found taking an active part in managing the political campaign of a partisan candidate for public office or political party office to be an impermissibly "active part in political management or in political campaigns."

3.11. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found soliciting votes in support of or in opposition to a partisan candidate for political office or political party office to be an impermissibly "active part in political management or in political campaigns."

3.12. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found acting as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or partisan candidate to be an impermissibly "active part in political management or in political campaigns."

3.13. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found driving voters to the polls on behalf of a political party or partisan candidate to be an impermissibly "active part in political management or in political campaigns."

3.14. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found endorsing or opposing a partisan candidate for public office or political party office in a political advertisement, broadcast, campaign literature or similar material to be an impermissibly "active part in political management or in political campaigns."

3.15. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found serving as a delegate, alternate or proxy to a political party convention to be an impermissibly "active part in political management or in political campaigns."

3.16. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found addressing a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for political or public office or political party office to be an impermissibly "active part in political management or in political campaigns."

3.17. Identify by case name, file number and docket number, any and all pre-July 19, 1940 "determinations" by the Commission which found initiating or circulating a partisan nominating petition to be an impermissibly "active part in political management or in political campaigns."

4.0. As used herein, and unless otherwise noted, "Pamphlet 20" refers to a pamphlet by the Civil Service Commission, numbered "20", dated May 1966, and titled "Political Activity of Federal Officers and Employees."

4.1. Does Pamphlet 20 reflect the current view of the Commission as to its interpretation of the statute?

4.1.2. If "yes", is it correct to assume that, since Pamphlet 20 was promulgated in May, 1966, the Commission's interpretation of the statute remains unaltered since May 1966?

4.1.3. If the answer to question 4.1 is "no" then what is

the current view of the Commission as to the force and effect of Pamphlet 20?

4.2. List with specificity each and every "determination" (as the term is employed both in questions 2.9 and 2.1) of the Commission reflected in the 1959 Edition of Pamphlet 20 and not reflected in the 1966 Edition.

4.2.1. Why were these determinations excluded from the 1966 Edition?

4.3. List with specificity all determinations (as the term is employed in question 2.9) of the Commission subsequent to the 1959 Edition of Pamphlet 20 which are reflected in the 1966 Edition of Pamphlet 20.

4.3.1. If the editions referred to in question 4.2. differ as to any activity which is prohibited in one yet permitted in the other, by what authority was such a change (or changes) effected?

4.4. List all editions of Pamphlet 20 which have been promulgated by the Commission.

4.5. Of all the editions of Pamphlet 20 which have been promulgated since passage of the Hatch Act, which in the judgment of the Commission, controls in the event the Commission finds a conflict among or between any of the editions?

4.5.1. Has the Commission ever found such a conflict?

4.5.2. If "yes", then describe such conflict (or conflicts) in detail.

4.6. Are any of the determinations referred to in question 2.1, not given force and effect by Pamphlet 20?

4.6.1. If so, list with specificity each and every such determination, giving a description sufficient for use in a subpoena?

4.7. Are any of the acts referred to in question 1.1, not prohibited by Pamphlet 20?

4.7.1. If so, list with specificity each and every such act.

4.7.2. If so, by what procedure were the acts listed in question 4.7.1 determined to be not prohibited?

4.7.3. If not, is Pamphlet 20 intended to be an exhaustive statement of these acts?

4.7.4. If the answer to question 4.7.3 is "no", then by what procedure were some of these acts included in Pamphlet 20 while others were excluded?

4.7.5. Are any of the activities prohibited by the regula-

tion referred to in question 3.1, not prohibited by Pamphlet 20 of 1966?

4.7.6. If so, list with specificity each and every such activity.

4.7.7. Are any of the activities prohibited by Pamphlet 20 of 1966 not prohibited by the regulation?

4.7.8. If so, list with specificity each and every such activity.

4.8. Does the regulation referred to in question 3.0 reflect any changes in the Commission's interpretation of the statute from that reflected in Pamphlet 20?

4.8.1. If so, in light of the regulation does Pamphlet 20 possess any continuing force and effect?

4.8.2. How is that force and effect distinguished from the force and effect of the regulation?

4.8.3. In the event the Commission finds a conflict between Pamphlet 20 and the regulation, which is controlling?

4.8.4. Has the Commission ever found such a conflict?

4.8.5. If "yes", describe such conflict (or conflicts) in detail.

4.9. On page 4 of Pamphlet 20 is stated: "Section 15 (15 U.S.C.A. 118-1) states that the provisions in the act containing prohibitions against 'taking any active part in political management or in political campaigns' are deemed to include activities prohibited by the civil-service rules." To what rules does this quote refer?

4.9.1. List all the "civil-service rules" that apply to the Commission's interpretation of 5 U.S.C. § 7324(a)(2).

4.9.2. Do these "rules" include all the acts referred to in question 1.1?

4.9.3. If they do not, which of these acts are excluded from the "rules?"

4.9.4. If they do not, by what procedure and authority were the excluded acts so excluded?

4.9.5. In the event that the Commission should find a conflict between the "rules" and the pre-July 19, 1940 determinations, which controls?

4.9.6. Has the Commission ever found such a conflict?

4.9.7. If "yes", state with specificity the factual situation in which the conflict arose.

4.9.8. In the event the Commission finds a conflict between the "rules" and the regulation referred to in question 3.1, which controls?

4.9.9. In the event the Commission finds a conflict between the "rules" and Pamphlet 20 referred to in question 4.1, which controls?

4.10. Indicate any and all pre-July 19, 1940 "determinations" by the Commission to the effect that addressing a primary or caucus is impermissibly "active part in political management or in political campaigns." Cite to case name, file number and docket number.

4.11. On page 11 of "Pamphlet 20" it is stated: "Whether a committee has an ultimate political purpose determines whether an employee may properly serve as a member." List all determinations by the Commission of specific committee membership on a committee, which committee was found to have an ultimate political purpose. List all determinations by the Commission of committee membership on a committee, which committee was *not* found to have an ultimate political purpose.

4.12. On page 13 of "Pamphlet 20" it is stated: "Public expression of opinion in such a way as to constitute taking an active part in political management or in political campaigns is accordingly prohibited." Is this language found in a pre-July 19, 1940 "determination" by the Commission?

4.12.1. If "yes", cite such determinations with specificity, giving a description sufficient for use in a subpoena.

4.12.2. If the answer to question 4.12 is "no", pursuant to what authority and by whom was the above quoted language promulgated?

4.12.3. If the answer to question 4.12 is "yes" state all the pertinent facts in that determination (or determinations) or, in the alternative, furnish a copy of the determination (or determinations).

4.13. At page 14 of "Pamphlet 20", it is stated: "Rendering partisan political service, such as transporting voters to and from the polls and candidates on canvassing tours, whether for pay or gratuitously, is held to be within the scope of prohibited political activities." Indicate any and all pre-July 19, 1940 "determinations" by the Commission which rest on the assumption that transporting voters to and from the polls is a partisan political service. Cite by case name, file number and docket number.

4.13.1. By the Commission's interpretation of this quote from Pamphlet 20, is driving a voter to the polls "on

behalf of" a non-"partisan" candidate (e.g. an independent) permitted in a partisan election?

4.14. Indicate any and all pre-July 19, 1940 "determinations" by the Commission to the effect that transporting voters to and from the polls is an act prohibited as an "active part in political management or in political campaigns." Cite to case name, file number and docket number.

5.0. On May 15, 1967 John W. Macy, Jr., then Chairman of the Civil Service Commission, accompanied by, *inter alia*, Robert E. Hampton, then a Commissioner of the Civil Service Commission, testified before the Commission on Political Activity of Government Personnel. The testimony of Chairman Macy and Commissioner Hampton is published in Volume Three of the Commission Report. All "testimony" quoted or referred to herein refers to the said testimony as reported in Volume Three of the Commission Report.

5.1. In referring to the Hatch Act, Chairman Macy stated (at p. 14) that is was the Commission's view that it was important that "the coverage of the law be clarified and modified". Commissioner Hampton endorsed this view (and all others expressed in Chairman Macy's Statement) at p. 24. Is it still the policy of the Commission that the law is in need of clarification and modification?

5.1.2. If not, when was the policy changed and upon what basis was the change made?

5.1.3. If the answer to question 5.1. is "yes", then what specific clarifications does the Commission feel are needed?

5.1.4. Why does the Commission feel such clarification to be needed?

5.2. At p. 15 Chairman Macy stated the view of the Commission that: "A more positive and definitive exposition of the political rights of Government employees is warranted." Does the Commission presently endorse this position?

5.2.1. If not, when was the policy changed and upon what basis was the change made?

5.2.2. If the answer to question 5.2 is "yes", then in what ways does the Commission feel the statute at present is not sufficiently definitive with respect to the political rights of government employees?

5.3. In referring to the activities which "are prohibited as constituting taking 'an active part in political manage-

ment or in political campaigns' ", Chairman Macy indicated (at p. 15) that it was the Commission's position that "[t]he prohibitions imposed prior to that time [July 19, 1940] may not all be valid in light of present circumstances". Does this statement reflect the current position of the Commission?

5.3.1. If not, when was the position changed and upon what basis was the change made?

5.3.2. If the answer to question 5.3 is "yes", then which prohibitions seem lest valid to the Commission in light of present circumstances?

5.3.3. Does the Commission feel these may be invalid in the light of the Constitution?

5.3.4. If not "Constitutionally invalid", then invalid in what sense?

5.3.5. What "present circumstances" appear to the Commission to cast doubt on the validity of certain of these prohibitions?

5.3.6. Is the Commission currently enforcing those prohibitions it feels to be of doubtful validity?

5.4. In referring to 5 U.S.C. § 7324(a)(2), Chairman Macy stated the Commission's view that in spite of the provision's qualifying provision, "The present language is somewhat broad and somewhat uncertain." (at p. 15). Does this statement reflect the current position of the Commission?

5.4.1. If not, when was the position changed and upon what basis was the change made?

5.4.2. If the answer to question 5.4 is "yes", then in what way does the Commission feel the present language is broad and uncertain?

5.4.3. Chairman Macy immediately continued by stating: "It is broad in the sense that it could be construed to prohibit certain activities that may not be sufficiently detrimental to the neutrality, efficiency, or integrity of the civil service as to justify the infringement of individual political rights. It is uncertain in that it fails to define with clarity and precision the types of activities which are prohibited." (at 15) Does this statement reflect the current position of the Commission?

5.4.4. If not, when was the Commission's position changed and upon what basis was the change made?

5.4.5. If the answer to question 5.4.3. is "yes", then how

does the Commission reconcile this position with the position taken in the Government Brief captioned "Motion to Dismiss" at 19-20 where it is stated that "Although the Act [the Hatch Act] concededly does limit the political freedom of action of those covered, it does so in a narrow and precise manner . . ."?

5.4.6. Does this statement from the Government's Brief represent the current view of the Commission?

5.5. In referring to 5 U.S.C. § 7324(a)(2) Chairman Macy (at 49) expressed the view of the Commission that ". . . at the present time one of the deficiencies of the present statute is that the language is very broad and very vague as to just what is permitted and consequently there does tend to be an impression on the part of many employees that the prohibited activities are really broader than they are." Does this statement reflect the current position of the Commission?

5.5.1. If not, when was the position changed and upon what basis was the change made?

5.5.2. If the answer to question 5.5. is "yes", then in the judgment of the Commission which activities tend to be construed by the employees as prohibited when, in fact and law, they are not so prohibited?

5.5.3. What efforts, if any, does the Commission put forth to correct such misconceptions?

5.5.4. In light of the position expressed and referred to in question 5.5 how does the Commission reconcile that position with the following statement in the Government's Brief (at 18): "A consideration of the Hatch Act with these standards in mind demonstrates beyond doubt that its language 'conveys sufficiently definitive warning as to the proscribed conduct when measured by common understanding and practices.'?"

5.5.5. Does this statement from the Government's Brief represent the current view of the Commission?

5.6. In referring to the qualifying provision of 5 U.S.C. § 7324(a)(2) Chairman Macy speaking on behalf of the Commission stated (at 17): "The present language tends to bind the Commission to its pre-1940 precedents." Does this statement represent the current view of the Commission?

5.6.1. If not, when was the position changed and upon what basis was the change made?

5.6.2. If the answer to the question 5.6 is "yes", in the Commission's judgment, to what degree does the provision in fact "bind" the Commission to its pre-1940 precedents?

5.6.3. To what degree is the Commission not bound to its pre-1940 precedents?

5.7. Speaking on behalf of the Commission, Chairman Macy stated (at 25): ". . . I do believe that in the light of certain decisions of the Supreme Court, it is important that this worthwhile statute be redrafted to avoid any possibility of subsequent determination [of unconstitutionality]." Is this position currently held by the Commission?

5.7.1. If not, when was the position changed and upon what basis was the change made?

5.7.2. If the answer to question 5.7 is "yes", then to what decisions of the Supreme Court does the Commission alude?

5.7.3. List all such decisions.

6.0. Has the Commission considered the implementation of any less restrictive alternatives to the Hatch Act?

6.1. If so list these.

6.2. If so, what, if anything, is being done to implement these alternatives?

7.0. Has the Commission prepared any draft legislation to replace the Hatch Act since Jan. 1, 1970?

7.1. If "yes", is the legislation less restrictive in prohibiting "active participation in political management or in campaigns?"

7.1.2. If so, what determinations, as referred to in question 2.1, would no longer be enforced by the provisions of the draft statute?

7.1.3. If so, what acts, as referred to in question 1.1, would not be prohibited by the provisions of the draft statute?

8.0. Does the Commission consider the survey research in Vol. 2 of the Report of the Commission on Political Activity of Government Personnel to be a methodologically sound survey?

8.1. Does the Commission consider that the survey referred to in question 8.0 employed "the proper universe" for a sample?

8.2. Does the Commission consider that the survey referred to in question 8.0 employed an acceptably "random sample" of that universe?

8.3. If the answer to question 8.0 is "no", what specific objections does the Commission have as to the methodological validity of the survey?

9.0. Has the Commission undertaken surveys to determine the attitudes and opinions of employees (as defined in question 2.5) as to the effect of the statute upon them?

9.1. If so, list with specificity such surveys, describing them in detail sufficient for identification in a subpoena.

9.2. How do the conclusions of such surveys differ from the conclusions reached in the survey referred to in question 8.0?

9.3. Does the Commission consider the survey or surveys listed in question 9.1 to be methodologically sound?

9.3.1. If "no", what specific objections does the Commission have as to the methodological validity of any such survey?

Please take notice that a copy of the answers must be served upon the undersigned within 30 days after the service of the interrogatories.

Dated: June 30, 1971.

WALD, HARKRADER, NICHOLSON & ROSS

By:

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A partner
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[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

MOTION TO DISMISS

Defendants, by their undersigned attorneys, hereby move the Court to dismiss this action pursuant to Rule 12 of the Federal Rules of Civil Procedure. The grounds for this motion are that the complaint fails to state a justiciable case or controversy sufficient to give this Court jurisdiction under Article III of the Constitution and, further, because the complaint fails to state a claim upon which relief can be granted. In support of this motion, the Court is respectfully referred to the Points and Authorities filed herewith.

Respectfully submitted,
L. PATRICK GRAY, III
Assistant Attorney General

THOMAS A. FLANNERY
United States Attorney

HARLAND F. LEATHERS
DAVID J. ANDERSON
Attorneys, Department of Justice
Attorneys for Defendants

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

ORDER

This matter having come before the three-judge court for argument on the defendants' motion to dismiss and the Court having determined that limited discovery shall be granted plaintiffs before ruling on said motion, it is hereby

ORDERED that

(1) Defendant Civil Service Commission shall on or before September 1, 1971, file with the Clerk of Court legible copies of all determinations made by the Commission prior to July 19, 1940, under rules prescribed by the President which are incorporated into the Hatch Act by reference under the provisions of Section 15 thereof;

(2) Defendant Civil Service Commission shall on or before September 1, 1971, file a formal written statement with the Court setting forth the procedures followed by the Commission when it is requested by an individual government employee, union of government employees, or political committee to give an advisory ruling as to the coverage of the Act as it may relate to a particular proposed action or course of conduct, including whether or not specific rulings prior to July 19, 1940, are cited or provided in response to such inquiry;

(3) The parties may file further briefs on the motion to dismiss within one month or by October 1, whichever is later, following the Commission's compliance with paragraphs (1) and (2) above.

(4) Except as here provided, no further discovery by the parties is authorized pending determination of the motion to dismiss.

For the Court
GERHARD A. GESSELL
United States District Judge

July 23, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT IN RESPONSE TO ORDER OF JULY 23, 1971

COMES Now the affiant, ANTHONY L. MONDELLO, and says as follows:

Since April 15, 1968, I have served as General Counsel to the Defendant United States Civil Service Commission (Commission). The Office of the General Counsel is responsible for the administration and enforcement of the Federal political activity statutes (the "Hatch Act"), the Civil Service Rule on political activity currently set out at 5 CFR 4.1, and implementing regulations found at 5 CFR parts 151 and part 733. As a matter of Commission policy, all matters involving political activity are handled by the Washington, D.C., central office, rather than by the Commission's several regional offices.

The Office of the General Counsel is divided into a Legal Advisory Section and an Enforcement and Litigation Section, each Section administered by an Assistant General Counsel. The Enforcement and Litigation Section is subdivided into three units: the Litigation Unit, the Political Activity Enforcement Unit, and the Political Activity Information Unit. The Information Unit answers inquiries, from whatever source, concerning the application of the Hatch Act, Rule, and regulations. It is estimated that some five hundred written requests for political activity opinions are received annually. It is further estimated that telephone requests for information account for another four hundred informal opinions each year.

When this Office is requested to furnish an advisory opinion as to the applicability of the Hatch Act, it has been our policy and practice to tailor the opinion to the particular source of the query. For example, if an opinion is requested by an attorney, a labor organization, a governmental agency, or a political organization, our response is relatively full, and it is likely that our opinion would encompass legislative history, citations to pertinent decisions (judicial and administrative), and citations to appropriate statutes and regulations. In other cases, however, where an

individual in an unofficial or unrepresentative capacity seeks a "yes—or—no" answer to his particular question, we usually briefly outline the salient legal principles, and then apply those principles to the factual situation at hand. In these latter types of cases, specific statutes, regulations or legislative history are not normally discussed but are only mentioned in passing.

As a practical matter, the Commission's political activity determinations made prior to July 19, 1940, are not cited or provided in response to inquiries. This situation prevails for several reasons:

1. Prior to 1940, both partisan and nonpartisan political activity were prohibited under the Civil Service Rules. Under the 1940 amendments to the Hatch Act (§ 18 of the Act, 54 Stat. 772, now codified as 5 U.S.C. §§ 1503 and 7326), employees were not prohibited from participating in nonpartisan activity. Thus, the pre-1940 determinations prohibiting nonpartisan political activity have been ineffective since July 19, 1940.
2. For many years prior to 1940, the Commission had published its Form 1236, a distillation of the Commission's political activity decisions under the Civil Service Rules. As a matter of administrative convenience, if not necessity, this distillation was designed to answer most of the political activity questions which the experience of the Office showed would recur. When the 1940 amendments to the Hatch Act were under consideration, a question was raised as to what were the determinations alluded to by proposed section 15 of the Act. (86 Cong. Rec. 2937). In other words, the Senate wished to find out the nature and extent of the substantive prohibitions contemplated by section 15. Senator Hatch replied by placing the substantive portions of Form 1236 into the record (86 Cong. Rec. 2938-40). Later in the debate, a consensus formed around the idea that it would be impossible to completely list in the statute all those activities in which employees could not engage (id., pp. 2948-54), and section 15 of the Act in its present form was ultimately approved as providing sufficient guidance for the Com-

mission to decide the merits of new factual situations as they arose.

In the light of this recognition in the legislative history that Form 1236 was the effective equivalent, for the factual situations it covered, of the pre-1940 determinations of the Commission, the Commission made extensive use of Form 1236 in its earlier decisions under the Hatch Act. Until the late 1940's, Form 1236 was also used extensively in the formulation of advisory opinions released by the Office of the General Counsel. As time passed, however, both the Commission and the General Counsel made more and more use of decisions and opinions issued under the Hatch Act, and placed less and less reliance on Form 1236 as the body of post-Hatch Act precedent became enlarged.

The end result is that the Commission and the Office of the General Counsel today rely almost entirely on post-Hatch Act precedents, precedents which are based ultimately on the substantive content of Form 1236 and the Commission's pre-1940 determinations.

3. The Office of the General Counsel has consistently endeavored to place its operations within the scope of both specific court decisions (e.g., *Wilson* v. *United States Civil Service Commission*, 136 F. Supp. 104, D.D.C. 1955), and discernible trends in judicial decisions generally. We certainly are aware of the great advances in the areas of individual liberties and due process that have taken place since 1940, and we attempt to administer the Hatch Act in the context of currently accepted constitutional doctrine and other legal doctrines. Should such doctrine collide with a strict interpretation of the Act, the Rule, or past administrative decisions, it is our policy that the current doctrines by which we are bound will prevail.

Attached hereto, and incorporated into this affidavit by reference, are copies of samples of advisory opinions issued by this Office within the past two years. Names and identifying information have been deleted in order to protect the privacy of the addressees.

I HEREBY CERTIFY that the foregoing is accurate and complete to the best of my knowledge and belief.

ANTHONY L. MONDELLO
General Counsel

[Acknowledgment and Certificate of Service Omitted in Printing]

[Attachment to Affidavit of Anthony L. Mondello]

Aug. 17, 1970

..... Esquire
Counselors at Law
Newark, New Jersey 07102

Dear Mr.

This is in response to your letter of July 24, 1970, requesting an opinion as to whether the provisions of 5 U.S.C. 7324 are applicable to ....., a Director of the Panama Canal Company.

Under section 61(a) of title 2, Canal Zone Code, the Panama Canal Company is a Government corporation and, as such, is an Executive agency as defined in section 105 of title 5, United States Code. In addition, the members of the Company's Board of Directors are appointed either by the President of the United States or by the Company's "stockholder", who is a Presidential designee. 2 C.Z.C. 63(a). An "employee" of the United States is defined in part as an individual who is appointed in the civil service by the President or the head of a Government controlled corporation engaged in the performance of a Federal function and is subject to the supervision of one of the named classes of individuals, including the President or head of a Government controlled corporation.

By synthesizing these various provisions, we would conclude that a Director of the Panama Canal Company is a civil service employee in the Executive Branch of the Federal Government. As such, a Director would be covered by the Federal law on political activity, 5 U.S.C. 7321-7327, formerly the Hatch Act.

It is our opinion, therefore, that ....., as a Director of the Panama Canal Company, is subject to the restrictions of the Hatch Act. However, if Mr. ..... serves on an irregular or intermittent basis in his capacity as a Director, he would be subject to the political activity restrictions while in an active duty status only, and only for the entire twenty-four hours of any day of actual Federal employment. See p. 8 of Pamphlet 20, as indicated.

The foregoing is predicated upon our assumption that Mr. ..... occupies no other governmental position,

Federal, State, or local, that would bring him within the prohibitions of the political activity law.

We trust this information will be of use to you.

Sincerely yours,
ANTHONY L. MONDELLO
General Counsel

[Attachment to Affidavit of Anthony L. Mondello]

Mar. 30, 1971

Mrs. .....
Apartment Two
..... N.W.
Washington, D.C. 20016

Dear Mrs. .....

We have received your letter of March 24, 1971.

Under the Hatch Act and Civil Service Rules, there would be no objection for you, as a Federal employee, to personally address the National Federation of Republican Women on the subject of "Women in Public Service in the Government."

We wish you every success in presenting this address.

Sincerely yours,
PATRICK M. GALLAGHER
Attorney

[Attachment to Affidavit of Anthony L. Mondello]

Aug. 13, 1971

Mrs. .....
Executive Secretary
Local Board Number .....
Selective Service System
Helena, Montana 59601

Dear Mrs.

Your letter of July 30, 1971, addressed to Mrs. Betty Mayer of the Commission's Helena Area Office, has been referred to this office for reply.

Under section 463(a) of title 50, United States Code (appendix), as amended, an uncompensated official of the Selective Service System is not subject to the restriction on political management and political campaigning set out as section 7324(a)(2) of title 5, United States Code. Thus, such an official may properly be a candidate in an election for public office, and may hold public office while serving with the Selective Service System.

Sincerely yours,
JOHN W. EARMAN
Senior Attorney

[Attachment to Affidavit of Anthony L. Mondello]

Aug. 24, 1971

Mr. .....
Manager-Chief Counsel
..... Water District
Post Office Box ....
Fresno, California 93755

Dear Mr. .....

This is with reference to your recent letter in which you ask our opinion as to the applicability of the Hatch Act (5 U.S.C. 1501 et seq.) to employees of the ..... Water District. I am sorry that we have been so long in answering, but we found it necessary to conduct considerable research and factual investigation before we could effectively respond to your query.

The threshold question is whether the ..... Water District may be considered a State or local agency within the purview of 5 U.S.C. 1501(2). We answer in the affirmative.

Under the California Water District Law, as amended, the individual water districts exercise a wide variety of typically governmental functions. The water districts may issue obligations such as general bonds and revenue bonds, and remain solely liable for such outstanding obligations. The water districts may exercise the power of condemnation and eminent domain in the acquisition of property, which has classically been the prerogative of the sovereign. The water districts may levy both preliminary and *ad valorem* assessments against holders of title to land within the district, and may compel a delinquency sale of realty for nonpayment of assessments. Violations of a water district's rules and regulations for water distribution are punishable as misdemeanors. Also, we note that the county board of the principal county of each water district declares, after election, that a water district has been formed and issues certificates of election to those elected to office in the water district. Finally, we note that the various water districts are municipal corporations under California law. See *Rock Creek Water District* v. *Calaveras County*, 172 P.2d 863 (1946).

When the California Water District Law is read as a

totality, we conclude that the various water districts are executive agencies of a political subdivision (the principal county) of the State. As such, the individual water districts are "State or local agency[s]" as that term is employed by 5 U.S.C. 1501(4).

The second question presented is whether the ..... Water District includes "an activity which is financed in whole or in part by [Federal] loans or grants" . . . 5 U.S.C. 1501(4). This we answer negatively.

Our understanding of the present factual situation is that ..... Water District is a party to two contracts with the Bureau of Reclamation: a water services contract and a distribution system contract. The water services contract is an arrangement whereby ..... purchases water on a per-acre-foot basis from the Bureau of Reclamation. Our view is that the water services contract is purely a purchase and sale agreement, and that no Federal loans or grants are involved under this contract.

With respect to the distribution system contract, it is our understanding that ..... distribution system is being constructed as a so-called 'section 9d project"; as such, the ..... distribution system is not being developed under the Distribution System Loan Act. We understand that the Bureau of Reclamation is building the distribution system with appropriated funds, and that ..... will reimburse the capital costs of the system over a period of forty years, free of interest. Title in the affected realty is vested in the United States until Congress provides otherwise. Under these circumstances, we are unable to conclude that the financial arrangements arising from the distribution system contract constitute a Federal loan or grant as contemplated by 5 U.S.C. 1501(4).

Needless to say, this opinion is based upon our understanding of the current financial relationship between ..... Water District and the United States. If ..... was to receive Federal loans or grants at some future time, it would then become necessary for us to reexamine our present position in the light of such new fiscal developments.

We hope this information will be helpful to you.

Sincerely yours,
J. JAMES MCCARTHY
Assistant General Counsel

[Attachment to Affidavit of Anthony L. Mondello]

Nov. 5, 1969

Mr. .....
Deputy Chairman
..... National Committee
Washington, D.C. 20006

Dear .....

Thanks for your letter of October 22 and the enclosed copy of the letter and news clipping from ..... of Minnesota.

As you know, the Hatch Act bars partisan political activity; nonpartisan activity is not restricted by the statute. Any Minnesota state or local employee is covered by the Act if his principal job is connected with a Federally funded activity.

Employees covered by the statute have the right to join political parties and other political organizations, express their opinions on political subjects and candidates, and make financial contributions for political purposes. However, they may not accept office in a partisan political organization or campaign in behalf of a partisan candidate.

I am advised that the Minnesota Election Law provides for nonpartisan elections for the offices of justice of the supreme court, judges of the district and probate courts, all members of the state legislature, and all elected county officials. This Commission has held that endorsement of a candidate by a political party does not transform a nonpartisan election into a partisan election for purposes of the Hatch Act.

We recognize the political reality that often an election which is by law nonpartisan can become partisan in fact. Apparently, this is what occurs in Minnesota where many of the candidates on a nonpartisan ballot are generally known by their party affiliations and, for certain offices, receive the backing of political parties.

The same situation occurs in other jurisdictions where the law prescribes nonpartisan elections for particular offices. Among the larger cities, Los Angeles, for example, has "nonpartisan" elections for municipal offices; but candidates for mayor are known by their party affiliation;

that is, as either a Democratic candidate or a Republican candidate. Party alignment and support, as well as other indicators of partisanship, characterize the Los Angeles mayorality contest, yet we have ruled that employee participation in that election is not prohibited by the Hatch Act.

We believe the statute requires the Commission to rule that where state or local law prescribes a nonpartisan election, the Hatch Act does not prohibit covered employees from participating. This result is based on our interpretation of the Federal statute, as I will explain briefly.

The pertinent language of the law is as follows:

> "Section 1502(a)(3) of this title does not prohibit political activity in connection with—
>
> (1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected...." (5 U.S.C. 1503)

Notice that the terms "partisan" and "nonpartisan" are not used. Rather, in applying the statutory language to a particular election the test is whether the voters may cast their votes for a candidate who is designated as officially representing a national or state political party for the office involved. If no candidate is so identified either on the ballot or by the fact that a party nomination (by primary or other means) is involved, we are compelled to follow the statutory exception quoted above.

The Supreme Court of Minnesota reviewed an election challenge involving the endorsement of a nonpartisan candidate by a political party, but found that the candidate who obtained the endorsement did not thereby violate the State election law. *Moon* v. *Halverson*, 206 Minn. 331; 288 N.W. 579 (1939). The court observed:

> "The candidate for the nonpartisan office is not thereby rendered a party candidate. Rather he is an individual supported by a party and free to encourage support from other sources, political and non-political." (Page 581)

To this extent, therefore, the Commission shares the view expressed by the court.

If we attempted to apply the more commonly used definitions of partisanship as the test for determining whether employee participation is permissible, there would be obvious difficulties and uncertainties not only for employees, but also for the Commission in administering the law. Under that criterion it could not be determined in advance whether an election campaign that begins on a nonpartisan footing might become "partisan" at some later point by the intrusion of either political organizations or what some might regard as partisan issues.

Thus, we believe our interpretation in not only supported by the words of the statute, but also settles one area of possible uncertainty in a law that is in some respects not adequately understood by the employees it affects.

In consequence . . . . . , I don't see any way that this Commission can limit the involvement of State employees in nonpartisan political activity, even if the employees are covered by the Hatch Act. Of course, even in a nonpartisan election, an employee covered by the Act cannot become a campaign worker or manager for a state or national political party. Needless to say, we will always take action when we hear about partisan activity on the part of any employee covered by the Act.

I'm sorry not to be of more help to you and . . . . . .

Sincerely yours,
ROBERT E. HAMPTON
Chairman

[Attachment to Affidavit of Anthony L. Mondello]

Jul. 19, 1971

....., Esquire

.....

.....

Washington, Pennsylvania 15301

Dear Mr. .....:

Your letter of July 1, 1971, addressed to Attorney General Mitchell, has been referred to this office for reply. In this letter, we shall attempt to delineate the general principles underlying the "Hatch Act" (5 U.S.C. 1501-1508), and then apply these principles to Mr. .....'s situation.

State and local employees subject to 5 U.S.C. 1501 *et seq.* are required to abstain from active participation in partisan political management and partisan political campaigns and elections. See *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947); *Oklahoma* v. *U.S. Civil Service Commission*, 330 U.S. 127 (1947). An election and preceding campaigning is considered partisan if any of the candidates for the office in question represents a State or national political party. See *In the Matter of Dean, CSC Docket No. 231* (1959); *In the Matter of Lesniak, CSC Docket No. 271* (1969). In turn, a State or national political party is one "... any of whose candidates for presidential elector received votes in the last preceding [presidential] election ...". Employees covered by the Hatch Act are free to engage in nonpartisan political activity. 5 U.S.C. 1503.

State and local employees are subject to the restrictions on political management and campaigning when their principal employment is in connection with an activity wholly or partially financed by Federal loans or grants. 5 U.S.C. 1501(4). From the information contained in your letter, it is not clear whether Mr. .....'s position with the Pennsylvania Department of Transportation constitutes his "principal employment," nor is it certain that the activity with which Mr. ..... is employed receives Federal funding. If you will furnish this information, perhaps we can give you a more definitive answer as to Mr. .....'s status under the Hatch Act.

Sincerely yours,

PATRICK M. GALLAGHER

Attorney

[Attachment to Affidavit of Anthony L. Mondello]

Apr. 5, 1971

Mrs. .....
Wheat Ridge, Colorado 80033

Dear Mrs. .....:

We have received your letter of March 25, 1971, which relates to the applicability of the Hatch Act to the organization known as *Common Cause*.

Common Cause is an issue-oriented organization not associated or identified with a State or national political party. In our opinion, Federal employees may properly become members in *Common Cause*, and may participate fully in the organization's activities. Needless to say, employees subject to the Hatch Act may not do in the name of *Common Cause* what they could not do prior to joining *Common Cause*. Stated another way, a Federal employee who engages in prohibited political activity under the direction or at the suggestion of the leaders of *Common Cause* will be held personally accountable for his own actions, regardless of whether he has acted as an individual or as a member of a group.

Enclosed is a copy of the recently revised political activity regulations for Federal employees.

Sincerely yours,
PATRICK M. GALLAGHER
Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

ORDER

Upon consideration of memoranda from the parties and oral argument before the three-judge court, it is hereby ORDERED that defendants' motion to dismiss the action be, and it is hereby, DENIED.

For the Court
GERHARD A. GESSEL
United States District Judge

November . . ., 1971

No objection as to form:

David J. Anderson
DAVID J. ANDERSON
U. S. Department of Justice
Counsel for Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS
(SET NO. 2)

(Set No. 1 contained interrogatories numbered 1 through 9 with various subheadings. This Set No. 2 therefore starts with interrogatory no. 10).

The plaintiffs request that the defendant Civil Service Commission answer, under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories numbered 10 through 14, and that the individual defendants who are members of the Commission answer the following interrogatory numbered 15:

10.0. As used in questions 10.1 through 10.1.2, the word "acts" means those acts of political management or campaigning listed by defendant in response to question 1.1 except that it does not include any acts listed by defendant in response to questions 1.2.1 or 1.3.1.

10.1. Does the defendant Civil Service Commission contend that some governmental interest compels the prohibition of each and every act?

10.1.1. If the answer to question 10.1 is "yes", identify with as much detail and particularity as possible for each and every act each and every governmental interest that compels its prohibition and explain in full detail why the prohibition is required to protect that interest.

10.1.2. If the answer to question 10.1 is not an unqualified "yes", identify each and every act whose prohibition is so compelled, and for each such act identify each and every governmental interest that compels its prohibition and explain in full detail why the prohibition is required to protect the interest.

11.0. Does defendant Civil Service Commission contend that all governmental interests identified in response to questions 10.1.1 and 10.1.2 would not be adequately protected by a statute that prohibited fewer acts than does Section 9 of the Hatch Act?

11.0.1. If the answer to question 11.0 is "no", outline the statute that defendant believes would adequately protect all such interests.

11.1. Does defendant Civil Service Commission contend that the statute proposed by the Commission on Political Activity of Governmental Personnel (REPORT, vol. 1, 1967) would not adequately protect all governmental interests identified in response to questions 10.1.1 and 10.1.2?

12.0 Identify each and every act or activity of partisan political management or campaigns which, if engaged in by an employee subject to the Hatch Act, would impair the efficiency, integrity or neutrality of (a) the employee, or (b) the civil service.

12.1 As to each such act or activity, explain the impairing effect.

12.2 Would each and every act have an impairing effect if only engaged in while off duty?

12.3. If the answer to question 12.2 is "no", identify those acts or activities as to which the answer applies and explain the reasons for the answer.

13.0. As to each act or activity identified in response to question 12.0, explain how the impact on (a) the employee and (b) the civil service would differ if the act or activity were not related to a "political party" as that term is defined at 5 C.F.R. § 733.101(c), or, in other words, explain the difference in impact between partisan and non-partisan activity.

14.0. With respect to the affidavit of Anthony L. Mondello,[1] identify with particularity each instance where the defendant Commission or its staff has determined that a "currently accepted constitutional doctrine or other legal doctrines" collided with "a strict interpretation of the Act, the Rule, or past administrative decisions." Identify all such determinations, whether in the context of formal or informal advisory opinions, enforcement action or inaction, or otherwise.

15.0. Does each individual member of defendant Civil Service Commission subscribe to each and every answer given on behalf of the Commission in response to interrogatories 1 through 11?

15.1. If the answer to question 15.0 is "no", identify

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[1] General Counsel of defendant Commission. Affidavit filed September 1, 1971, in response to an Order of the Court.

each disagreeing member and set forth separately the reasons for each of his or her disagreements.

Please take notice that a copy of the answers must be served upon the undersigned within 30 days after the service of the interrogatories.

Dated: November 5, 1971

WALD, HARKRADER, NICHOLSON & ROSS
By:
THOMAS C. MATTHEWS, JR.
A Partner
Attorney for Plaintiff
1320 Nineteenth Street, N.W.
Washington, D.C. 20036
Tel.: 296-2121

Of Counsel:

RALPH J. TEMPLE
American Civil Liberties Union
1424 16th Street, N.W.
Washington, D.C. 20036

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

ANSWER

First Defense

Defendants, by their undersigned attorneys, in answer to the numbered paragraphs of the complaint, hereby admit, deny and allege as follows:

1. The first paragraph of the complaint sets forth conclusions of law and not allegations of fact requiring answer. However, if an answer is deemed to be required, denied.

2. Admitted.

3. Defendants admit the first sentence of paragraph three and admit that the plaintiff Democratic and Republican Committees are unincorporated associations. Defendants deny the remaining allegations set forth in paragraph three for lack of information or knowledge sufficient to form a belief as to their truth.

4. Defendants admit the allegations set forth in the second sentence of paragraph four. Defendants deny the remaining allegations set forth in paragraph four for lack of information of knowledge sufficient to form a belief as to their truth.

5. Defendants admit the allegations set forth in the second sentence of paragraph five. Defendants deny the remaining allegations set forth in paragraph five for lack of information or knowledge sufficient to form a belief as to their truth.

6. Defendants admit the allegations set forth in the second sentence of paragraph six. Defendants deny the remaining allegations set forth in paragraph six for lack of information or knowledge sufficient to form a belief as to their truth.

7. Defendants admit the allegations set forth in the second sentence of paragraph seven. Defendants deny the remaining allegations set forth in paragraph seven for lack of information or knowledge sufficient to form a belief as to their truth.

8. Defendants admit the allegations set forth in the second sentence of paragraph eight. Defendants deny the re-

maining allegations set forth in paragraph eight for lack of information or knowledge sufficient to form a belief as to their truth.

9. Defendants admit the allegations set forth in the second sentence of paragraph nine. Defendants deny the remaining allegations set forth in paragraph nine for lack of information or knowledge sufficient to form a belief as to their truth.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Defendants deny for lack of knowledge or information sufficient to form a belief as to their truth, the allegations in paragraph fourteen regarding the capacity in which plaintiffs breathe this suit, and deny any remaining allegations of that paragraph.

15. Denied.

16. The first sentence set forth in paragraph sixteen is a statement of the purpose of this suit, and does not appear to require answer. Defendants admit so much of the second sentence of paragraph sixteen as alleges that the Civil Service Commission has in the past enforced and continues to enforce the political management and political campaigning provisions of the Hatch Act against those subject to its terms. The remaining allegations of this paragraph are denied.

17. The allegations set forth in the first sentence of paragraph seventeen are denied for lack of knowledge or information sufficient to form a belief as to their truth, except that defendants admit that the Civil Service Commission has and will enforce the provisions of the Hatch Act against those employees subject to its terms. The allegations set forth in the remainder of paragraph seventeen are denied for lack of knowledge or information sufficient to form a belief as to their truth.

18. Defendants admit so much of the first sentence of paragraph eighteen as alleges that the Civil Service Commission enforces the provisions of the Hatch Act against covered employees, and denies the remainder of that sentence. The remaining allegations of paragraph eighteen are denied.

19. Denied.

20. Defendants deny the allegations set forth in paragraph twenty for lack of information or knowledge sufficient to form a belief as to their truth.

21. Defendants deny the allegations set forth in paragraph twenty-one for lack of information or knowledge sufficient to form a belief as to their truth.

22. Defendants admit to the allegations set forth in the first sentence of paragraph twenty-two. Defendants deny the remaining allegations set forth in paragraph twenty-two for lack of information or knowledge sufficient to form a belief as to their truth.

23. Defendants deny the allegations set forth in paragraph twenty-three for lack of knowledge or information sufficient to form a belief as to their truth, except that defendants admit that plaintiff Wylie on or about July 12, 1970, resigned from permanent employment as Director, Political and Legal Analysis Branch, National Center for Health Services Research and Development, Department of Health, Education and Welfare, a position in the competitive Civil Service, and defendants further admit that from or about July 11, 1970 until November 3, 1970 plaintiff Wylie was employed by the Department of H.E.W. as a consultant on a part-time basis, and that plaintiff Wylie subsequently sought to be employed by H.E.W. on a permanent basis, and that in early December, 1970 he was requested by an H.E.W. personnel officer that, before he be reemployed on a permanent basis, he sign a statement that, on the days when he had served as a consultant, he did not engage in political management or political campaigning prohibited by the Hatch Act, and that plaintiff Wylie declined to sign this statement.

24. Defendants admit the allegations set forth in the first sentence of paragraph twenty-four. Defendants deny the remaining allegations set forth in paragraph twenty-four for lack of information or knowledge sufficient to form a belief as to their truth.

25. Defendants admit the allegations set forth in the first sentence of paragraph twenty-five. Defendants deny the remaining allegations set forth in paragraph twenty-five for lack of information or knowledge sufficient to form a belief as to their truth.

26. Denied.

27. Denied.

28. Denied.

All allegations not hereinbefore expressly admitted, denied, or modified are hereby denied.

Second Defense

The complaint fails to set forth a justiciable case or controversy.

Third Defense

Plaintiffs lack standing to maintain this action.

Fourth Defense

The defendant United States Civil Service Commission is not a suable entity.

Fifth Defense

The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendants, having fully answered, hereby ask the Court to dismiss this action.

Respectfully submitted,
L. PATRICK GRAY, III
Assistant Attorney General

THOMAS A. FLANNERY
United States Attorney

HARLAND F. LEATHERS
DAVID J. ANDERSON
Attorneys, Department of Justice
Attorneys for Federal Defendants

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

DEFENDANTS' OBJECTIONS TO INTERROGATORIES

Defendants, by their undersigned attorneys, hereby object to Sets No. 1 and 2 of plaintiffs' interrogatories as follows:

1. Defendants object to each and every one of the interrogatories served upon them in plaintiffs' Set No. 1 and Set No. 2 on the ground that they are neither relevant nor material to the subject matter of this action which involves the validity, on its face, of an Act of Congress, and because these interrogatories seek to elicit legal conclusions and attempts to improperly probe the mental processes of the defendants. In addition to this general objection, defendants object more particularly to individual interrogatories as stated hereafter.

2. Defendants object to interrogatories No. 1.2.1, 1.2.2, 1.3.1, 1.3.2, and 1.3.3. to the extent that they require an answer more detailed than simply stating categories of cases designated in answer to interrogatory 1.1, on the ground that the Civil Service Commission makes such determinations on a case-by-case basis when they arise before the Agency in its enforcement capacity, and that responses to these interrogatories in greater detail would amount to the issuance of an advisory opinion.

3. Defendants object to interrogatories No. 2.9.2, 2.9.3, and 2.9.4, on the same ground noted in paragraph 2, *supra*.

4. Defendants object to interrogatories No. 3.2, 3.3, 3.3.1, and 3.3.2 on the ground that this suit does not involve the validity or construction of the regulations published at 5 C.F.R. 733.122 or the administration of the Hatch Act.

5. Defendants object to interrogatories No. 4.1, 4.1.2, 4.1.3, 4.2, 4.2.1, 4.3, 4.3.1, 4.4, 4.5, 4.5.1, 4.5.2, 4.6, 4.6.1, 4.7, 4.7.1, 4.7.2, 4.7.3, 4.7.4, 4.7.5, 4.7.6, 4.7.7, 4.7.8, 4.8, 4.8.1, 4.8.2, 4.8.3, 4.8.4, and 4.8.5 on the ground that this suit does not involve the validity or interpretation of Pamphlet 20 or the administration of the Hatch Act.

6. Defendants object to interrogatories No. 4.11, 4.12,

4.12.1, 4.12.2, 4.13, and 4.13.1, on the same ground noted in paragraph 5, *supra*.

7. Defendants object to interrogatories 5.1 through 9.3.1 on the ground that they seek advisory opinions as to the Commission's view toward hypothetical cases and seek to elicit the opinion of the Commission on subjects which are irrelevant and immaterial to this lawsuit.

8. Defendants object to interrogatories 10 through 15.1 on the same ground as indicated in paragraph 7, *supra*.

Respectfully submitted,
L. PATRICK GRAY, III
Assistant Attorney General

THOMAS A. FLANNERY
United States Attorney

HARLAND F. LEATHERS
DAVID J. ANDERSON
Attorneys, Department of Justice
Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

ORDER

This matter having come before the Court on defendants' Objections to Plaintiffs' Sets No. 1 and 2 of Interrogatories, and the Court having considered these objections and having heard counsel in Chambers and being fully advised in the premises, and the Court having previously denied defendants' Motion to Dismiss this action and being of the opinion that a further development of the record herein is appropriate, it is therefore this .. day of November, 1971 hereby

ORDERED:

1. Defendants' general objection to each and every one of the interrogatories in Sets No. 1 and 2 of plaintiffs' interrogatories on the ground of irrelevancy and immateriality be and is hereby overruled.

2. Defendants' more specific objection in part to interrogatories No. 1.2.1, 1.2.2, 1.3.1, 1.3.2 and 1.3.3, be and is hereby sustained and defendants are required to answer these interrogatories only to the extent of designating descriptive categories.

3. Defendants' specific objections to interrogatories No. 2.9.2, 2.9.3, 2.9.4, 3.2, 3.3, 3.3.1, 3.3.2, 4.1 through 4.3.1, 4.5 through 4.8.5, 4.11, 4.13, 4.12, 4.12.1, 4.12.2, 4.13.1, and 5.1 through 7.1.3 be and are hereby sustained. Defendants' objection to interrogatory 4.4 be and is hereby overruled.

4. The defendants' specific objections to interrogatories 8.0 through 9.3.1 be and are hereby sustained, except that if defendants intend to challenge the statistical validity of the survey designated in these interrogatories they shall indicate the basis for such challenge in writing prior to the hearing date to be established by this Court.

5. Defendants' objections to interrogatories No. 10 through 15.1 be and are hereby sustained, except that the objection to interrogatory No. 14 be and is hereby overruled.

6. The Court notes that plaintiffs have withdrawn interrogatories No. 2.1 through 2.6.4, 2.7.2, 2.8, 2.8.4 through 2.9.1, 2.9.5 through 2.9.7, 3.5 through 3.17, 4.12.3 and 4.14, and the defendants are not required to respond to same.

7. The defendants are ordered to serve their answers to the interrogatories on which objections have been overruled within 30 days of the date of this Order, by which date the parties are directed to have exchanged with each other all material which they propose to submit as part of their direct case. The parties are also directed to file closing briefs within 60 days of the date of this Order. The parties will be advised when the Court fixes a final hearing date in this matter.

GERHARD A. GESSEL
United States District Judge

No objection as to form:

THOMAS C. MATTHEWS, JR.
Attorneys for Plaintiffs

DAVID J. ANDERSON
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

NOTICE OF DEPOSITION

Please take notice that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, plaintiffs will take the deposition upon oral examination of the United States Civil Service Commission at the offices of Wald, Harkrader & Ross, 1320 Nineteenth Street, N.W., Washington, D. C. 20036, beginning at 9:30 A.M. on Monday, January 17, 1972, and continuing from day to day until the examination is concluded.

The matters on which examination is requested are:

1. Whether all the acts prohibited by Section 15 of the Hatch Act are needed to insure the effective functioning of the Civil Service and what effect the absence of certain of the prohibitions would have upon the effective functioning of the Civil Service.
2. Whether employees subject to the Hatch Act are in fact confused about the scope of its prohibitions and whether the Commission has been able, through its various publications, to eliminate that confusion.

The deposition will be taken before a Notary Public or other person authorized to administer oaths under the laws of the District of Columbia. You are invited to attend.

THOMAS C. MATTHEWS, JR.
STEPHEN M. TRUITT
Wald, Harkrader & Ross
1320—19th Street, N.W.
Washington, D. C. 20036
296-2121
Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

DEFENDANTS' ANSWER TO INTERROGATORIES

Pursuant to Rule 33, Federal Rules of Civil Procedure, Anthony L. Mondello, General Counsel of the Civil Service Commission, being first duly sworn, in answer to those interrogatories served upon defendants by plaintiffs on June 30, 1971 and November 5, 1971, as to which the Court has overruled defendants' objections, hereby deposes and says:

1.1. List with specificity each and every act of political management or campaigning which was prohibited "on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President."

A. In response to this interrogatory, defendants refer plaintiffs to the pre-July 19, 1940 determinations of the Commission which were filed with the Court pursuant to court order dated July 23, 1971; and to paragraphs 11 through 34 of the September 1939 edition of Form 1236 which are reprinted at 86 Cong. Rec. 2938-2940. A copy of the September 1939 edition of Form 1236 is attached hereto as Exhibit A and incorporated herein by reference.

1.2. Is each act listed in response to question 1.1 prohibited by the statute as presently interpreted by the Civil Service Commission?

A. No.

1.2.1. If the answer to question 1.2 is "no", then specify which of the listed acts are no longer deemed prohibited.

A. (1). Those acts which are in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential electors received votes in the last preceding election at which presidential electors were selected; or which are in connection with any question which is not specifically identified with a National or State political party.

Representative of this category are:

a. activity in connection with questions relating to

constitutional amendments, referandums, approval of municipal ordinances and others of similar character;

b. serving in an impartial manner as an election officer;

c. activity in connection with political questions or governmental issues which are not connected with a national or State political party.

(2) Public expression of opinion on political subjects and candidates.

Representative of this category are:

a. the wearing of political badges and buttons; and

b. talking politics in public

(3) Holding public office.

1.2.2. Under what authority did the Commission determine that these acts were permissible after having determined them impermissible prior to July 19, 1940?

A. (1) Section 18 of the Hatch Act. This section had the effect of broadening the scope of permissible political activity by permitting activity which is not connected with a State or national political party.

(2) Section 9(a) of the Hatch Act, as amended by section 12(a) of the Act of July 19, 1940. In an opinion dated January 8, 1941, the Attorney General stated that the Hatch Act permits public expression of opinion on political subjects and candidates provided it does not amount to taking an active part in political management or political campaigns. (40 Op. ATT'Y GEN. 15). By Executive Order 8705, March 5, 1941, the word "privately" was deleted from section 1 of Civil Service Rule I and the Rule was changed to accord with the language of the Hatch Act.

(3) Although there are pre-July 19, 1940 decisions which might be taken to indicate that the holding of a public office was prohibited by civil service rules, such prohibitions were imposed prior to the enactment of the Civil Service Act by Executive Order 9 of January 17, 1873. This Order applied to classified and non-classified employees in the executive branch of government and it and all amendatory orders relating to dual Federal-State office holdings were revoked by Executive Order 11408 on April 25, 1968. The Attorney General has ruled that section 9(a) of the Hatch Act does not apply to holding a State or local office. (39 Op. ATT'Y

GEN. 462; Attorney General's Circular No. 3301, October 26, 1939).

1.3. Is it the position of the Civil Service Commission that the statute requires that each and every act listed in response to question 1.1 be prohibited?

A. No.

1.3.1. If the answer to question 1.3 is "no", then which of these acts are permissible under the current view of the Commission?

A. See answer to interrogatory 1.2.1.

1.3.2. Are there presently certain circumstances which lead the Commission to this judgment, which circumstances did not obtain when said acts were initially prohibited.

A. See answer to interrogatory 1.2.2.

1.3.3. If so, what are these circumstances and why do they compel a reversal of the Commission's original judgment?

A. See answer to interrogatory 1.2.2.

2.7. In the following cases, the Commission indicated that it had searched the pre-July 19, 1940 "determinations" but finding none sufficiently in point rendered in each case decisions favorable to the respondents: *John N. Cawley*, Dkt. No. 1247 (Dec. 29, 1949); *Herbert S. Reed*, Dkt. No. 1204 (Aug. 4, 1947); and *Nell W. Floyd*, Dkt. 1149 (Feb. 7, 1947). Were these determinations based upon a view of the Commission that only specific activities which were determined prior to July 19, 1940 to be prohibited "active participation in political management or political campaigns" can be so determined after July 19, 1940?

A. The decisions in these cases pre-date the tenure of the defendants and their answer is based on their interpretation of the cases. Defendants understand the interrogatory to mean "in order to find a violation in a current case, is it necessary that an exact factual prototype be found among the pre-Hatch Act decisions?" In this context, the answer is *no*.

2.7.1. If so, is this the Commission's view today?

A. Not applicable.

2.8. Is the decision of the Commission in *Archie B. Cole*, File No. 47-3057 (June 8, 1932) a binding determination within the meaning of the Act?

A. No.

2.8.1. What specific act or acts does that determination (Archie B. Cole) prohibit?

A. Public criticism of government policy.

2.8.2. Does the Commission today deem those specific acts to be prohibited by the statute?

A. No.

2.8.3. If the answer to question 2.8 is "no", then by what procedure was the case referred to in question 2.8 overruled?

A. (1) Because of section 18 of the Hatch Act which permitted non-partisan political activity on the part of covered employees, and section 12(a) which permitted public expsession of opinion, the detesmination was not incorporated into the Act.

(2) Although the *Cole* case was referred to the Commission as a political activity violation, the Commission recorded its action in the matter under the heading *"Disloyalty of Archie B. Cole—"* and it appears that the Commission's determination was based upon its finding that Cole's activity in criticizing Government policy made him unsuitable for Federal employment. A copy of Minute 3 of June 8, 1932, it attached hereto as Exhibit B and incorporated herein by reference.

3.0. 5 C.F.R. 733.122 specifically designated thirteen (13) activities as prohibited acts of political management or campaigning. The regulation also points out that the activities prohibited "are not limited to" those listed in the regulation. As used herein the word "regulation" shall refer to 5 C.F.R. 733.122.

3.1. Pursuant to what authority has the Commission promulgated the regulation?

A. (1). 22 Stat. 403, 404 (The Civil Service Act of 1883, pertinent sections codified at 5 U.S.C. 1301 and 5 U.S.C. 3302). These code sections pertain to presidential authority to prescribe rules for the competitive service.

(2). Civil Service Rule 5.1(a) issued pursuant to the presidential rule-making authority. This rule reads:

> "The Commission is authorized and directed to promulgate and enforce such regulations as may be necessary to carry out the provisions of the Civil Service Act and Rules, the Veterans' Preference Act, and all other applicable statutes or executive orders imposing responsibilities on the Commission."

(3). Revised Statutes 1753 (16 Stat. 5.1, 3 March, 1871; last 16 words, codified as 5 U.S.C. 7301), 5 U.S.C. 7301 reads:

> "The President may prescribe regulations for the conduct of employees in the executive branch." Section 601 of Executive Order 11222, May 8, 1965, authorizes the Civil Service Commission to perform the functions vested in the President by 5 U.S.C. 7301 without his prior approval, ratification or other action.

3.4. How can an employee (as defined in question 2.5) determine which activities, other than those specifically enumerated in the regulation, are prohibited?

A. By making an inquiry to his personnel office or the Civil Service Commission.

4.4. List all editions of Pamphlet 20, which have been promulgated by the Commission:

A.

July 1951	August 1957
May 1952	November 1959
May 1953	November 1961
April 1954	March 1963
August 1955	March 1964
January 1956	May 1966

4.9. On page 4 of pamphlet 20 is stated: "section 15 (15 U.S.C.A. 118-1) states that the provisions in the act containing prohibitions against 'taking any active part in political management or in political campaigns' are deemed to include activities prohibited by the civil-service rules." To what rules does this quote refer?

A. The civil service rules prescribed by the President under the authority granted him in the Civil Service Act of 1883.

4.9.1. List all the "civil service rules" that apply to the Commission's interpretation of 5 U.S.C. 7324(a)(2).

A. Section 1 of Rule IV (5 C.F.R. 4.1).

4.9.2. Do these "rules include *all* the acts referred to in question 1.1?

A. No.

4.9.3. If they do not, which of these acts are excluded from the "rules"?

A. The same acts which are listed in answer to interrogatory 1.2.1.

4.9.4. If they do not, by what procedure and authority were the excluded acts so excluded?

A. Under the same authority cited in answer to interrogatory 1.2.2.

4.9.5. In the event that the Commission should find a conflict between the "rules" and the pre-July 19, 1940 determinations, which controls?

A. There can be no conflict between the "rules" and the determinations since the latter are interpretations of the former.

4.9.6. Has the Commission ever found such a conflict?

A. No.

4.9.7. If "yes", state with specificity the factual situation in which the conflict arose.

A. Not applicable.

4.9.8. In the event the Commission finds a conflict between the "rules" and Pamphlet 20 referred to in question 4.1, which controls?

A. See answer to interrogatory 4.9.5.

4.9.9. In the event the Commission finds a conflict between the "rules" and the regulation referred to in question 3.1, which controls?

A. See answer to interrogatory 4.9.5.

4.10. Indicate any and all pre-July 1940 "determinations" by the Commission to the effect that addressing a primary or caucus is impermissibly "active part in political management or in political campaigns". Cite to case name, file number and docket.

A. *Jeff Carpenter,* rural carrier, 1913, 31 AR 146—addressed township caucus and made nominations therein.

Forrest C. Berry, 1932 Min. 368—addressed caucus or convention.

The following cases involve taking an active part in a primary meeting or addressing a party meeting or convention:

John W. Bashford, letter carrier, 1910, 27 AR 122—active part in primary meeting.

H. M. St. Clair, substitute carrier, 1913, 31 AR 150—made a political speech at a meeting held to select members of the county committee of his party.

William L. Baker, rural carrier, 32 AR 143—Nominating a candidate for mayor in a town convention.

Willie O. Zook, rural carrier, 32 AR 143—Nominating candidates for elective office in town caucus.

Horace W. Truesdell, scientific assistant in plant pathology, 1920, 37 AR 107—addressed a meeting to elect delegates to a convention.

14.0. With respect to the affidavit of Anthony L. Mondello,[1] identify with particularity each instance where the defendant Commission or its staff has determined that a "currently accepted constitutional doctrine or other legal doctrines" collided with "a strict interpretation of the Act, the Rule, or past administrative decisions." Identify all such determinations, whether in the context of formal or informal advisory opinions, enforcement action or inaction, or otherwise.

A. In the following cases, falling within the area of *Wilson* v. *United States Civil Service Commission*, it was determined that charges were not warranted under the circumstances of the case:

1. Complaint dated December 16, 1968 (*Beals*). Employees mailed post cards to friends, co-workers and relatives urging them to vote for candidates in a partisan election.
2. Complaint dated November 3, 1971 (*McHugh*). Employee wrote a newspaper article which was critical of a candidate in a partisan election.
3. Complaint dated November 13, 1970 (*Rutledge*). Employee distributed copies of a newspaper editorial endorsing an incumbent Congressman along with the employee's reply supporting the Congressman's opponent.
4. Complaint dated October 30, 1970 (*Neyhart*). Employee wrote two letters to the editor which were laudatory of a candidate in a partisan election.

ANTHONY L. MONDELLO
General Counsel

[Acknowledgment and Certificate of Service Omitted in Printing]

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[1] General Counsel of defendant Commission. Affidavit filed September 1, 1971, in response to an Order of the Court.

UNITED STATES CIVIL SERVICE COMMISSION

POLITICAL ACTIVITY AND POLITICAL ASSESSMENTS

OF FEDERAL OFFICEHOLDERS AND EMPLOYEES

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CONTENTS

	Page
I. POLITICAL ACTIVITY—GENERAL PROHIBITIONS	1
Civil-service rule	1
Statute	2
Definition of political activity	2
II. APPLICABILITY OF THE RULE AND STATUTE	2
Classified employees	2
Excepted and nonclassified employees	2
Temporary employees—employees furloughed or on leave	3
Rural carriers	3
Substitute rural carriers	4
Fourth-class postmasters	4
Postmasters at first-, second-, and third-class offices	4
Retired employees	5
III. PARTICULAR TYPES OF PROHIBITED ACTIVITIES	5
Activity by indirection	5
Conventions	5
Primaries—caucuses	5
Committees	6
Clubs and organizations	6
Contributions	7
Meetings	7
Expression of opinions	7
Activity at the polls and for candidates	7
Election officers	7
Newspapers—publication of letters or articles	8
Liquor question	8
Betting or wagering on elections	8
Activity in civic organizations and citizens' associations	8
Parades	8
Signing petitions	8
Applying for Presidential positions	9
Other forms of political activity	9
IV. CANDIDACY FOR OR HOLDING LOCAL OFFICE—CLASSIFIED AND NONCLASSIFIED EMPLOYEES	9
Candidacy for local office	9
Federal employees' holding local office	10
Interpretation of Executive order of January 17, 1873	11
Eligibles' holding local office	12
Minor local offices which may be held by Government officers and employees	12
Special exceptions from order of January 17, 1873	12
V. STATUTES RELATING TO POLITICAL ASSESSMENTS, POLITICAL COERCION AND DISCRIMINATION, AND THE PURCHASE AND SALE OF PUBLIC OFFICE	17
VI. POLITICAL ASSESSMENTS	18
Solicitation or receipt of political contributions	18
Circulars of solicitation bearing names of Federal employees	18
"Political assessments" defined	19
Solicitation or receipt of political contributions in Federal buildings	20
Letters addressed to or delivered in Federal buildings	20
Discrimination on account of political contributions	21
Payment of political contributions by one employee to another	21
Penalties for assessments; felonies	21
VII. PURCHASE AND SALE OF PUBLIC OFFICE	21
Payment, receiving payment, for influence in procuring appointive public office prohibited; punishment for violation	21, 22
Promising benefits for political activity	22

	Page
VIII. POLITICAL COERCION	22
IX. POLITICAL DISCRIMINATION	23
Failure to contribute or render political service	23
No disclosure as to opinions or affiliations	23
Definition of discrimination	23
X. POLITICAL RECOMMENDATION	23
Senators and Representatives	23
Disclosing politics	23
Recommendation for promotion	24
Disclosure of names for political purposes	24
XI. JURISDICTION OF COMMISSION	24
Withholding salary of employees engaged in political activity	24
Commission's determinations final	25

POLITICAL ACTIVITY AND POLITICAL ASSESSMENTS OF FEDERAL OFFICEHOLDERS AND EMPLOYEES

I. GENERAL PROHIBITIONS

1. Civil-service rule I and the act of August 2, 1939.—Civil-service rule I, section 1, reads as follows:

No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns.

The act of August 2, 1939, provides in part as follows:

It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with or affecting the election or the nomination of any candidate for the Office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions (sec. 2, Public, No. 252, 76th Cong.).[1]

It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the

[1] Penalty for violation of this section is a fine of not more than $1,000 or imprisonment for not more than 1 year, or both (sec. 8, Public, No. 252, 76th Cong., Aug. 2, 1939).

funds appropriated by any act of Congress for such position or office shall be used to pay the compensation of such person (sec. 9 (a) and (b), Public, No. 252, 76th Cong.).

The rule and the statute quoted above are general prohibitions against participation in politics by officers and employees of the Government. All officers and employees of the Government are, in addition, subject to a number of statutes relating to solicitation of political contributions, political coercion, political discrimination, and the purchase and sale of public office, which are set forth in sections 36 to 59 of this publication.

Every Government employee is expected to be familiar with the statutes and the rule relating to political activity; ignorance does not excuse their violation. Each appointee to the classified service on entering on duty is required to sign a statement that he will familiarize himself with the rule and the laws relating to political activity.

2. **Definition of political activity.**—It is impossible to give a complete list of the particular activities in which an employee may not engage. The prohibition against political activity extends not only to national politics, but also to State, county, and municipal politics and to the activities of any political party by whatever designation it may be known. Any group of persons which opposes another group in matters of governmental principles or policies, or which contends for governmental power, is a political party. Since the scope of governmental activity is constantly changing, a question which is not a political issue at one time may assume a political aspect at another.

The merits of a particular cause or issue are immaterial. If politics is involved, active participation by employees of the Government is prohibited. (See sec. 11.) An employee may participate in a discussion where no political issue is involved or make an address on any moral or ethical subject, but when two or more parties or factions become engaged in a contest for rival or antagonistic measures or policies of governmental control or regulation a political issue is created.

II. APPLICABILITY OF THE RULE AND STATUTE

3. **Classified employees.**—Active participation in politics by employees in the competitive classified service is prohibited by civil-service rule I and also by the act of August 2, 1939, regardless of whether the classified status of such employees was acquired through competitive examination, classification by statute, or classification by Executive order. (See sec. 9.)

4. **Excepted and nonclassified employees.**—Only the first sentence of section 1, civil-service rule I, applies to employees in positions excepted from the competitive classified service. This sentence has been partially enacted in section 2 of the act of August 2, 1939 (see sec. 1 above), and violation of this provision of the statute constitutes a criminal offense.

Under section 9 (a) of the act of August 2, 1939 (see sec. 1 above), all persons employed in the executive branch of the Federal Govern-

ment[3] whether or not such persons are in the competitive classified service are prohibited from using their official authority or influence for the purpose of interfering with an election or affecting the result thereof; and from taking an active part in political management or in political campaigns. The statute, however, expressly reserves to Government employees the right to vote and the right to express their opinions on all political subjects. The effect of this section of the statute, therefore, is to place the same restrictions upon the political activities of all officers and employees of the executive branch of the Government, including Presidential appointees, as section 1 of civil-service rule I places upon the political activities of employees in the classified service, except that employees who are not in the competitive classified service may, according to a statement issued by the Attorney General, express their political opinions publicly, whereas classified employees are confined to a private expression of opinion. In expressing their political opinions publicly, however, nonclassified employees and excepted employees must not take part in an organized political campaign. Except for the manner in which nonclassified employees are permitted to express their political opinions, there is no distinction between employees who are in the classified service and employees who are not in the classified service with respect to the prohibition against political activity.

5. **Temporary employees—employees furloughed or on leave.**—The mere fact that an employee is a temporary or emergency employee or a substitute, or is on furlough or leave of absence, does not exempt him from the statute or the rule. So long as an employee's name is carried on the rolls, restrictions regarding political activity apply to him and he must refrain from their violation, even though he may not be on active duty.[4] It is not permissible for an employee to take leave of absence for the purpose of working for a political committee or organization or of becoming a candidate for an elective office with the understanding that he will resign his classified position if nominated or elected.

6. **Rural carriers.**—An Executive order of December 30, 1911, provides as follows:

> Hereafter paragraphs (*a*) and (*b*) of section 1 of civil-service rule VII shall apply to the appointment of rural carriers, and three eligibles shall be certified by the Civil Service Commission.
>
> In all cases selections shall be made with sole reference to merit and fitness and without regard to political considerations. No inquiry shall be made as to the political or religious opinions or affiliations of any eligible, and no recommendation in any way based thereon shall be received, considered, or filed by any officer concerned in making selections or appointments. Any such recommendation, in writing, forwarded to any such officer shall be at once returned

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[3] Except (a) the President and Vice President of the United States; (b) persons whose compensation is paid from the appropriation for the office of the President; (c) heads and assistant heads of executive departments; (d) officers who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

[4] An employee who resigns effective at the expiration of his accrued leave may engage in politics after his last day of active service (minute of Commission, Nov. 5, 1938).

to the writer, with attention invited to the purport of this order, and attention hereto shall be similarly directed in connection with any verbal recommendation. Where it is found that there has been a violation of these provisions by any officer concerned in making selections or appointments, such fact shall be cause for the immediate removal of such officer from the service, and the Commission shall make prompt report of any such case for appropriate action to the Postmaster General, or, as to Presidential appointees, to the President. The appointment of the rural carrier concerned, if effected, shall be canceled.

Persons employed as rural carriers, while retaining the right to vote as they please and to express their opinion privately on all political subjects, shall take no active part in political management or in political campaigns. Any rural carrier taking such part shall be removed from the service or otherwise disciplined, recommendation as to the penalty to be imposed in each case to be made by the Civil Service Commission.

NOTE.—Paragraphs (a) and (b) of section 1 of civil-service rule VII refer to the certification and appointment of eligibles.

7. **Substitute rural carriers.**—The restrictions regarding political activity are not applicable to substitute rural carriers, when they are not engaged upon substitute duties, to the same degree as to regular employees. While serving his route, however, a substitute is subject to the same discipline as a regular employee and must refrain from political activity. He must not use his position for political purposes, acting either independently or in collusion with the regular carrier.

8. **Fourth-class postmasters.**—The following is an extract from regulations approved by the President November 25, 1912:

In all cases selection for appointment shall be made with sole reference to merit and fitness and without regard to political or religious considerations. No inquiry shall be made as to the political or religious opinions or affiliations of any applicant or eligible, and in conformity with section 10 of the Civil Service Act no recommendation in any way based thereon shall be received or considered by any officer concerned in making selections or appointments. The attention of the writer of any such recommendation shall be invited to the purport of this order, and attention hereto shall be similarly directed in connection with any verbal recommendation. Where it is found that there has been a violation of these provisions by any officer concerned in making selections or appointments, such fact shall be cause for the immediate removal of such officer from the service, and the Civil Service Commission shall make prompt report of any such case for appropriate action to the Postmaster General, or, as to Presidential appointees, to the President. The appointment of the fourth-class postmaster concerned, if effected, shall be canceled. Persons employed as postmasters of the fourth class, while retaining the right to vote as they please and to express their opinions privately on all political subjects, shall take no active part in political management or in political campaigns. Any such postmaster taking such part shall be removed from the service or otherwise disciplined, recommendations as to the penalty to be imposed in each case to be made by the Civil Service Commission. This section shall apply to all offices of the fourth class of whatever compensation.

9. **Postmasterships at the first-, second-, and third-class offices.**—Postmaster positions at the first-, second-, and third-class offices were included in the competitive classified service by the act of June 25,

1938 (52 Stat. 1076), and the political activities of such postmasters are therefore subject to the same restrictions as those of classified officers and employees.

10. **Retired employees.**—Persons retired from the civil service are not regarded as employees of the Government and are not, therefore, subject to the restrictions of the civil-service rules. Such persons may engage in politics to the same extent as persons not connected with the Government service.

III. PARTICULAR TYPES OF PROHIBITED ACTIVITIES

11. As has been pointed out, it is impossible to make a complete enumeration of all the particular types of political activities in which Government employees may not engage. The general scope of the political-activity rule has been defined in section 2 above. In the following sections some of the types of political activity which occur more frequently are discussed in detail.

12. **Activity by indirection.**—Any political activity which is prohibited in the case of an employee acting independently is also prohibited in the case of an employee acting in open or secret cooperation with others. Whatever the employee may not do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Employees are therefore accountable for political activity by persons other than themselves, including wives or husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation.

This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative, and in his or her own behalf. Cases have arisen, however, in which the facts showed that the real purpose of a wife's activity was to accomplish a political act prohibited to her husband, the attempt being made for her husband's benefit and at his instigation or even upon his coercion. This may be true of individuals or it may occur among groups of employees' wives, associated for the purpose of securing for their husbands what their husbands may not secure for themselves. In such situations, it is obvious that the prohibitions against political activity are being indirectly violated. The collusion or coercion renders the wife's activity imputable to the husband, he being guilty of the same infraction as if he were openly a participant.

13. **Conventions.**—Candidacy for or service as delegate, alternate, or proxy in any political convention or service as an officer or employee thereof is prohibited. Attendance merely as a spectator is permissible, but the employee so attending must not take any part in the convention or in the deliberations or proceedings of any of its committees, and must refrain from any public display of partisanship or obtrusive demonstration or interference. (See secs. 4 and 19.)

14. **Primaries—caucuses.**—An employee may attend a primary meeting, mass convention, beat convention, caucus, and the like, and may cast his vote on any question presented, but he may not pass

this point in participating in its deliberations. He may not act as an officer of the meeting, convention, or caucus, may not address it, make motions, prepare or assist in preparing resolutions, assume to represent others, or take any prominent part therein.

15. **Committees.**—Service on or for any political committee or similar organization is prohibited. An employee may attend as a spectator any meeting of a political committee to which the general public is admitted, but must refrain from activity as indicated in the preceding paragraphs.

Whether a committee has an ultimate political purpose determines whether a classified employee may properly serve as a member. Assignment may be to duties which, if considered alone, would seem far removed from active politics, but which, when considered as a part of the whole purpose, assume an active political character. No attempt can be made to differentiate between workers on or under political committees with respect to the degree to which they are politically active.

16. **Clubs and organizations.**—Employees may be members of political clubs, but it is improper for them to be active in organizing such a club, to be officers of the club, or members or officers of any of its committees or to act as such, or to address a political club. Service as a delegate from such a club to a league of political clubs is service as an officer or representative of a political club and is prohibited, as is service as a delegate or representative of such a club to or in any other organization. In other words, an employee may become a member of a political club, but may not take an active part in its management or affairs, and may not represent other members or attempt to influence them by his actions or utterances. (See secs. 4 and 19.)

Section 6 of the act of August 24, 1912 (37 Stat. 555), provides in part—

That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof, shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service.

Section 9A of the act of August 2, 1939 (Public, No. 252, 76th Cong.), provides as follows:

(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the

funds appropriated by any act of Congress for such position or office shall be used to pay the compensation of such person.

17. **Contributions.**—An employee may make political contributions to any committee, organization, or person not employed by the United States, but may not solicit, collect, receive, or otherwise handle or disburse the contributions. (See provisions of the Criminal Code, discussed in secs. 36 to 50.)

18. **Meetings.**—Service in preparing for, organizing, or conducting a political meeting or rally, addressing such a meeting, or taking any part therein, except as a spectator, is prohibited.

19. **Expression of opinions.**—Although section 9 (a) of the act of August 2, 1939, reserves to Federal officers and employees the right to express their opinions on all political subjects, officers and employees in the competitive classified service are subject also to section 1 of civil-service rule I, under which such employees must confine themselves to a *private* expression of opinion. Nonclassified and excepted employees may not indulge in such public expression of opinion as constitutes taking part in an organized political campaign. (See foregoing secs. 1 and 4.)

20. **Activity at the polls and for candidates.**—An employee has the right to vote as he pleases, and to exercise this right free from interference, solicitation, or dictation by any fellow employee or superior officer or any other person. It is a violation of the Federal Corrupt Practices Act to pay or offer to pay any person for voting or refraining from voting, or for voting for or against any candidate for Senator or Representative in, or Delegate or Resident Commissioner to, Congress. It is also a violation of the law to solicit, receive, or accept payment for one's vote or for withholding one's vote. (See U. S. Code, title 2, sec. 250.)

Under the act of August 2, 1939, it is a criminal offense for any person to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote as he may choose in any election of a national character. It is also a criminal offense to promise any employment, position, work or compensation, or other benefit made possible by an act of Congress, as a consideration, favor, or reward for political activity or for the support of or opposition to any political candidate or party. (See secs. 48 and 50 herein.)

It is the duty of an employee to avoid any offensive activity at primary and regular elections. He must refrain from soliciting votes, assisting voters to mark ballots, helping to get out the voters on registration and election days, acting as the accredited checker, watcher, or challenger of any party or faction, assisting in counting the vote, or engaging in any other activity at the polls except the marking and depositing of his own ballot. Rendering service, such as transporting voters to and from the polls and candidates on canvassing tours, whether for pay or gratuitously, is held to be within the scope of political activities prohibited by the rule, even if such service is performed without regard to political party.

21. **Election officers.**—Service as judge of election, inspector, checker, teller, or as election officer of any kind is prohibited.

22. **Newspapers—publication of letters or articles.**—A classified employee may not publish or be connected editorially or managerially with any political newspaper, and may not write for publication or publish any letter or article, signed or unsigned, in favor of or against any political party, candidate, faction, or measure. An employee who writes such a letter or article is responsible for any use that may be made of it whether or not he gives consent to such use. (See secs. 4 and 19.)

23. **Liquor question.**—Activity in campaigns concerning the regulation or suppression of the liquor traffic is prohibited. An employee may be a member but not an officer of a club, league, or other organization which takes part in such a campaign. The dissemination of temperance propaganda is permissible, but any endeavor for or against the regulation, control, or suppression of the liquor traffic through political agencies is prohibited.

24. **Betting or wagering on elections.**—Betting or wagering upon the results of primary and general elections is penalized by the laws of most States and is improper political activity.

25. **Activity in civic organizations and citizens' associations.**—Activity in organizations having for their primary object the promotion of good government or the local civic welfare is not prohibited by the act of August 2, 1939, or civil-service rule I, provided such activities have no connection with the campaigns of particular candidates or parties.

26. **Parades.**—An employee may not march in a political parade, organize, or be an officer or leader of such a parade.

A Government employee may not take part in the activities of a musical organization in any parade or other activity of a political party.

27. **Signing petitions.**—The first amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Section 6 of the act of August 24, 1912 (37 Stat. 555), provides that "the right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or Member thereof, shall not be denied or interfered with."

The right guaranteed by the Constitution and the statute extends only to petitions addressed to the Government, or to Congress or Members thereof. It does not extend to petitions addressed to State, county, or municipal governments, or to other political units. A classified employee is permitted to sign petitions of the latter class *as an individual*, without reference to his connection with the Government, but he may not initiate them, circulate them, or canvass for the signatures of others.

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[4] Appointment is made by the President by and with the advice and consent of the Senate to postmaster positions of the first, second, and third classes, but these positions are in the competitive classified service under the act of June 25, 1938.

28. **Applying for Presidential positions not in the classified service.**[1]—When a classified employee seeks promotion by appointment or transfer to a Presidential office not in the classified service there is no objection to his becoming a candidate for such an office, provided the consent of his department is obtained, and provided he does not violate section 1 of rule I, prohibiting the use of his official authority or influence in political matters, and provided further that he does not neglect his duty and avoids any action that would cause public scandal or semblance of coercion of his fellow employees or of those over whom he desires to be placed in the position he seeks.

A classified employee may circulate a petition or seek endorsements for his own appointment to a Presidential position, subject to the qualifications above stated, and he may, as an individual, sign a petition or recommend another person for such an appointment; but he may not circulate a petition or solicit endorsements, recommendations, or support for the appointment of another person to such a position, whether such other person is a fellow employee or one not at the time in the Government service.

When an unofficial primary or election is held for the purpose of determining the popular choice for the Presidential office, a classified employee may permit his name to appear upon the ticket, but he may not solicit votes in his behalf at such a primary or election, or in any manner violate section 1 of rule I. He may vote and express privately his opinions, but may not solicit votes or publicly advocate the candidacy or election of himself or any other person. Although it is permissible for a classified employee, *as an individual*, to sign a petition or recommend another person for appointment to a nonclassified position, he is not permitted to sign such a petition as a Government employee or in any other way to use his official authority or influence to advance the candidacy of any person for election or appointment to any office. Classified employees are permitted to exercise the right as individuals to sign a petition favoring a candidate for any office, but they may not do so as Government employees or as a group or association of Government employees.

29. **Other forms of political activity.**—Among other forms of political activity which are prohibited are the distribution of campaign literature, badges or buttons, and assuming general political leadership or becoming prominently identified with any political movement, party, or faction, or with the success or failure of any candidate for election to public office.

IV. CANDIDACY FOR OR HOLDING LOCAL OFFICE—CLASSIFIED AND NONCLASSIFIED EMPLOYEES

30. **Candidacy for local office.**—Candidacy for a nomination or for election to any national, State, county, or municipal office is not permissible. The prohibition against political activity extends not merely to formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. The fact that candidacy is merely passive is immaterial; if an employee acquiesces in the efforts of friends in furtherance of

[1] See footnote on opposite page.

such candidacy such acquiescence constitutes an infraction of the prohibitions against political activity.

31. **Federal employees holding local office.**[5]—Persons holding Federal civil office by appointment, whether in the competitive classified service or not, are prohibited from accepting or holding any office under a State, Territorial, or municipal government by an Executive order of January 17, 1873, which is as follows:

Whereas it has been brought to the notice of the President of the United States that many persons holding civil office by appointment from him or otherwise under the Constitution and laws of the United States while holding such Federal positions accept offices under the authority of the States and Territories in which they reside, or of municipal corporations, under the charters and ordinances of such corporations, thereby assuming the duties of the State, Territorial, or municipal office at the same time that they are charged with the duties of the civil office held under Federal authority:

And whereas it is believed that, with but few exceptions, the holding of two such offices by the same person is incompatible with a due and faithful discharge of the duties of either office; that it frequently gives rise to great inconvenience, and often results in detriment to the public service; and, moreover, is not in harmony with the genius of the Government:

In view of the premises, therefore, the President has deemed it proper thus and hereby to give public notice that, from and after the 4th day of March, A. D. 1873 (except as herein specified), persons holding any Federal civil office by appointment under the Constitution and laws of the United States will be expected, while holding such office, not to accept or hold any office under any State or Territorial government, or under the charter or ordinances of any municipal corporation; and, further, that the acceptance or continued holding of any such State, Territorial, or municipal office, whether elective or by appointment, by any person holding civil office as aforesaid under the Government of the United States, other than judicial offices under the Constitution of the United States, will be deemed a vacation of the Federal office held by such person, and will be taken to be and will be treated as a resignation by such Federal officer of his commission or appointment in the service of the United States.

The offices of justices of the peace, of notaries public, and of commissioners to take the acknowledgment of deeds, of bail, or to administer oaths, shall not be deemed within the purview of this order and are excepted from its operation, and may be held by Federal officers.

The appointment of deputy marshals of the United States may be conferred upon sheriffs or deputy sheriffs. Any deputy postmasters, the emoluments of whose office do not exceed $600 per annum, are also excepted from the operation of this order and may accept and hold appointments under State, Territorial, or municipal authority, provided the same be found not to interfere with the discharge of their duties as postmasters.[6] Heads of departments and other officers of the Government who have the appointment of subordinate officers are required to take notice of this order, and to see to the enforcement of its provisions and terms within the sphere of their respective departments or offices and as relates to the several persons holding appointments under them, respectively.[7]

[5] See sec. 35.

[6] See sec. 8.

[7] A Federal employee who resigns at the expiration of his accrued leave may accept a State or municipal position after his last day of active Federal service (16 Comp. Gen. 776, Feb. 19, 1937).

32. Interpretation of the order of January 17, 1873.—An Executive order of January 28, 1873, as amended by Executive order of August 27, 1933, is as follows:

Inquiries having been made from various quarters as to the application of the Executive order issued on the 17th of January relating to the holding of State or municipal offices by persons holding civil offices under the Federal Government, the President directs the following reply to be made:

It has been asked whether the order prohibits a Federal officer from holding also the office of an alderman or of a common councilman in a city, or of a town councilman of a town or village, or of appointments under city, town, or village governments. By some it has been suggested that there may be distinction made in case the office be with or without salary or compensation. The city or town offices of the description referred to, by whatever names they may be locally known, whether held by election or by appointment, and whether with or without salary or compensation, are of the class which the Executive order intends not to be held by persons holding Federal offices.

It has been asked whether the order prohibits Federal officers from holding positions on boards of education, school committees, public libraries, religious or eleemosynary institutions incorporated or established or sustained by State or municipal authority. Positions and service on such boards and committees, and professorships in colleges[*] are not regarded as "offices" within the contemplation of the Executive order, but as employments or service in which all good citizens may be engaged without incompatibility and in many cases without necessary interference with any position which they may hold under the Federal Government. Officers of the Federal Government may therefore engage in such service, provided the attention required by such employment does not interfere with the regular and efficient discharge of the duties of their office under the Federal Government. The head of the department under whom the Federal office is held will in all cases be the sole judge whether or not the employment does thus interfere.

The question has also been asked with regard to officers of the State militia. Congress having exercised the power conferred by the Constitution to provide for organizing the militia, which is liable to be called forth to be employed in the service of the United States, and is thus, in some sense, under the control of the General Government, and is, moreover, of the greatest value to the public, the Executive order of the 17th January is not considered as prohibiting Federal officers from being officers in the militia in the States and Territories.

It has been asked whether the order prohibits persons holding office under the Federal Government being members of local or municipal fire departments, also whether it applies to mechanics employed by the day in the armories, arsenals, and navy yards, etc., of the United States. Unpaid service in local or municipal fire departments is not regarded as an office within the intent of the Executive order, and may be performed by Federal officers, provided it does not interfere with the regular and efficient discharge of the duties of the Federal office, of which the head of the department under which the office is held will in each case be the judge.

Mechanics and laborers employed by the day in armories, arsenals, navy yards, etc., and master workmen and others who hold appointments from the Government or from any department, whether for a fixed time or at the

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[*] Includes assistant professorships in a State college, assistant lectureships in an evening school of a municipal university, instructorships in a State college, and similar positions in State and municipal colleges and universities (minute of Commission, August 7, 1937).

pleasure of the appointing power, are embraced within the operation of the order.

33. **Eligibles holding local office.**—Eligibles who are holding a local office not excepted from the prohibitions of the order of January 17, 1873, on selection for and acceptance of any position in the competitive classified service or of unclassified laborer must immediately resign the local office. Such resignation must be effected whether the service in the local office is compensated or uncompensated or whether the employee is on active duty or leave without pay. The holding of a local office not excepted from the prohibitions of the order of January 17, 1873, is an absolute disqualification for appointment, and unless persons otherwise eligible for appointment are willing immediately to resign the local office in the event of selection for appointment, their appointments cannot be approved.

34. **Minor local offices which may be held by Government officers and employees.**—Although the Executive orders of January 17 and January 28, 1873, prohibit generally any person holding Federal civil office by appointment, from accepting or holding an office under a State, Territorial, or municipal government, certain offices of a minor character are excepted from this general prohibition. Among these are positions of justice of the peace; notary public; commissioner to take acknowledgment of deeds, of bail, or to administer oaths; positions on boards of education, school committees, public libraries, and in religious or eleemosynary institutions. In addition, Federal employees are, under certain conditions, permitted to hold other local offices under authority of the Executive orders set forth in section 35. The permission to hold local offices granted by these Executive orders, however, is now subject to the general prohibition of section 9 of the act of August 2, 1939 (see sec. 1), against participation in political management and in political campaigns by Federal employees.

In view of the broad language of section 9 of the act of August 2, 1939, the incumbency by a Federal employee of any *elective* office whatever under a State, Territorial, or municipal government is prohibited, regardless of whether or not the office is of such character that its incumbency was permitted by Executive order prior to the enactment of the act. The incumbency by a Federal employee of an appointive office under a State, Territorial, or municipal government is permissible, provided such incumbency is specifically authorized by some statute or Executive order. In securing such offices, however, and in the discharge of the duties thereof, Federal employees must not engage in political management.

35. **Special exceptions to the order of January 17, 1873.**—The following Executive orders contain special exceptions to the general prohibition of the Executive orders of January 17 and January 28, 1873. The authority conferred by these orders is now subject to the general restriction contained in the act of August 2, 1939, against participation in political management and in political campaigns. (See sec. 34, above.)

Employees on Indian reservations may be appointed under State authority as deputy sheriffs or constables, as the requirements of the

service demand. The reason for this action is that on all reservations which have been allotted and opened for settlement conditions arise wherein the Federal Government has sole jurisdiction over certain offenses and the State has jurisdiction over other offenses, and if the joint authority of a Federal and State officer can be merged in one person, a serious difficulty in the administration of justice is removed.

There is no objection to the holding of a low-salaried position in a municipal fire department.

Under Executive orders certain other exceptions have been made, as indicated below:

Employees of the Department of Agriculture.—Officers and employees of the Department of Agriculture are authorized to hold State and Territorial positions when such action is deemed necessary by the Secretary of Agriculture to secure a more efficient administration (Executive order of June 20, 1907).

Collectors of cotton statistics, Bureau of the Census.—State and county officials may be appointed special agents under the Bureau of the Census for the collection of cotton statistics (Executive order of August 4, 1909).

Moderators of town meetings.—The temporary office of moderator of a town meeting and offices of a like character are excepted from the operation of the order of January 17, 1873 (Executive order of August 24, 1912).

Employees of the Reclamation Service and the National Park Service.—Employees of the Reclamation Service and the National Park Service may, with the approval of the Secretary of the Interior, accept appointments as deputy State fish or game wardens, if no compensation is attached to the position (Executive order of July 9, 1914).

Lighthouse Service—Laborers.—Laborers in charge of lights in the Lighthouse Service are excepted from the operation of the order of January 17, 1873 (Executive order of October 6, 1915).*

Special agents, Department of Labor.—Persons holding State, Territorial, or municipal positions may be appointed as special agents when such action is deemed necessary by the Secretary of Labor to secure a more efficient administration of any law coming within the purview of the Department of Labor (Executive order of January 2, 1923).

Employees of the Veterans' Administration.—Officers and employees of the United States Veterans' Administration serving in a medical capacity and on a part-time basis may with the consent of the Administrator hold State, county, or municipal positions in which employed in a medical capacity. Officers and employees of the United States Veterans' Administration may with the consent of the Administrator accept appointments under State, county, or municipal authority as deputy sheriffs (Executive order of August 6, 1924).

Employees of the Alaska Railroad.—Employees of the Alaska Railroad, permanently residing in municipalities on the line of the railroad, are permitted to become candidates for and hold municipal office therein (Executive order of October 22, 1926).

Appointments in the Department of Commerce.—Persons holding State, Territorial, or municipal positions may receive, unless prohibited by law, appointments under the Department of Commerce when the Secretary of that Department deems such employment necessary to secure more efficient administration of the duties of his department (Executive order of July 3, 1931).

Officers of the Public Health Service.—Officers of the Public Health Service are permitted, upon recommendation of the Surgeon General of the Public Health Service, and the approval of the Secretary of the Treasury, to hold office in State, Territorial, or local health organizations, in order to cooperate with and aid State, Territorial, or local health departments; and State, Territorial, or local health officials or employees are permitted, unless prohibited by law, to hold office in the Public Health Service when the Surgeon General and the Secretary of the Treasury deem such employment necessary to secure a more efficient administration of the duties imposed upon the Public Health Service (Executive order of August 31, 1931).

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*The Lighthouse Service has been consolidated with the Coast Guard, Treasury Department.

Offices under municipalities of the Virgin Islands.—Membership in the Colonial Council of the Municipality of St. Thomas and St. John, or in the Colonial Council of the Municipality of St. Croix, Virgin Islands, being unremunerative positions, shall not be deemed disqualification for employment in the Federal service of the Virgin Islands, notwithstanding the Executive order of January 17, 1873, provided it does not interfere with the efficient discharge of the duties of the Federal position, of which the head of the department under which the position is held will be the judge (Executive order of February 27, 1933).

Employees of the National Park Service.—Employees of the National Park Service are permitted, with the approval of the Secretary of the Interior, to accept appointments as deputy sheriffs under the laws of the States or Territories in which such employees may be on duty: *Provided*, That their services as such deputy sheriffs shall be without compensation and shall not in any manner interfere or conflict with the performance of their duties as employees of the National Park Service (Executive order of April 3, 1936).

Medical officers, Indian Service.—Officers and employees of the Indian Service, Department of the Interior, serving in a medical or sanitary capacity, either on a part-time or full-time basis, may hold, with the consent of the Secretary of the Interior, State, county, or municipal positions of a similar character: *Provided*, That such services shall not in any manner interfere or conflict with the performance of their duties as officers or employees of the Indian Service: *And provided further*, That there shall be no additional compensation when the Federal officer or employee is carried on a full-time basis (Executive order of May 13, 1936).

District advisers in the Interior Department under the act of June 28, 1934.—State, county, or municipal officers, when duly elected by qualified voters of a grazing district, may be appointed by the Secretary of the Interior to serve as district adviser under the act of June 28, 1934 (48 Stat. 1269), as amended by the act of July 14, 1939 (Public, No. 173, 76th Cong.), for intermittent duty, when the Secretary of the Interior deems such services necessary in the interest of grazing on public lands (Executive order of June 17, 1937).

Immigration inspector, Department of Labor, Virgin Islands.—Officers and employees of the Municipalities of St. Thomas and St. John or of the Municipality of St. Croix, Virgin Islands, may be appointed to the position of immigration inspector for the Virgin Islands (Executive order of November 6, 1937).

Employees of the Interior Department.—Officers and employees of the Interior Department, upon approval of the Secretary of the Interior, may hold office under State, Territorial, and municipal governments engaged in cooperative and related work with the Department, provided that the services to be performed pertain to such work and do not interfere with the performance of the Federal duties. State, Territorial, and municipal employees engaged in cooperative and related work with the Interior Department may be appointed in the Department of the Interior when the Secretary deems such employment necessary to secure more efficient administration of said work. Appointments of such officers and employees to positions subject to the civil-service laws must be made in accordance with such laws (Executive order of January 21, 1938).

Employees of the United States Marshal for the Virgin Islands.—Any officer or employee of the police or prison departments of the Territorial and municipal governments of the Virgin Islands may be appointed to the position of deputy or any other position in the office of the United States Marshal for the Virgin Islands (Executive order of May 24, 1938).

Employees of the Division of Grazing, Department of the Interior.—Employees of the Division of Grazing of the Department of the Interior, with

the approval of the Secretary, may accept appointment as deputy fire warden, deputy fish warden, or deputy game warden under the States in which such employees may be on duty, provided that their services in the State position are without compensation and do not interfere with the performance of the duties of the Federal position (Executive order of August 4, 1938).

Utilization of services of State and local officers.—The heads of a number of Federal agencies are authorized by specific statutes to employ the services of State and local officers.

Employees residing in municipalities near the District of Columbia.—Special permission has been granted to employees residing in municipalities near the District of Columbia to hold local municipal office by the Executive order of February 14, 1912, which is quoted in the paragraphs below. The scope of this permission has been restricted by the act of August 2, 1939, which prohibits participation in political management or political campaigns. The permission granted by the Executive order of February 14, 1912, must therefore be exercised subject to the provisions of the act of August 2, 1939. (See sec. 34 above.)

Employees of the executive civil service permanently residing in the following incorporated municipalities adjacent to the District of Columbia will not be prohibited from becoming candidates for or holding municipal office in such corporations:

In Maryland—Takoma Park,[88] Kensington, Garrett Park, Chevy Chase, Glen Echo, Hyattsville, Mount Rainier, Somerset,[89] North Beach,[90] Capitol Heights,[91] Laurel,[92] Riverdale,[93] Bladensburg,[94] Brentwood,[95] Berwyn Heights,[96] Cottage City,[97] North Brentwood,[98] Edmonston,[99] Colmar Manor,[100] Fairmount Heights,[101] Eagle Harbor,[102] Cobb Island,[103] Seat Pleasant,[104] Cheverly,[105] District Heights,[106] Greenbelt.[107]

In Virginia—Clifton Station,[108] Falls Church, Vienna, Herndon, Potomac.[109]

In the exercise of the privilege granted by this order, officers and employees must not neglect their official duties and must not engage in national, State, or county political activity in violation of the civil-service rules, and if there is such violation the head of the department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

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[88] Executive order, May 5, 1914.
[89] Executive order, May 26, 1914.
[90] Executive order, February 23, 1916.
[91] Executive order, March 9, 1918.
[92] Executive order, November 25, 1920.
[93] Executive order, April 29, 1922.
[94] Executive order, June 7, 1923.
[95] Executive order, May 19, 1924.
[96] Executive order, July 12, 1924.
[97] Minute of the Commission, July 18, 1924.
[98] Minute of the Commission, September 2, 1924.
[99] Minute of the Commission, June 6, 1927.
[100] Minute of the Commission, June 15, 1927.
[101] Minute of the Commission, August 6, 1929.
[102] Minute of the Commission, May 29, 1930.
[103] Minute of the Commission, July 17, 1931.
[104] Minute of the Commission, April 24, 1931.
[105] Minute of the Commission, May 18, 1936.
[106] Minute of the Commission, November 29, 1937.
[107] Minute of the Commission, December 21, 1937.
[108] As amended by Executive order, December 24, 1921. Potomac, Va., has been annexed to the city of Alexandria, Va., and the authority granted by the order is revoked.

The Civil Service Commission may extend the privilege of this order to other incorporated municipalities in Maryland and Virginia when it shall deem it necessary to the domestic interests of the Government employees resident therein." (Executive order of February 14, 1912, as amended.)

NOTE.—The exception made in this case to section 1 of rule I and the Executive order of January 17, 1873, does not extend to municipalities other than those specifically named.

Employees of navy yards, arsenals, and military establishments.—Special permission has been granted to employees of navy yards, arsenals, and military establishments to hold local and municipal office by the Executive order of May 14, 1909, as amended by Executive order of August 27, 1919, which is quoted in the following paragraph. The scope of this permission has been restricted by the act of August 2, 1939, which prohibits participation in political management or political campaigns. The permission granted by the Executive orders must therefore be exercised subject to the provisions of the act of August 2, 1939. (See section 34 above.)

Whenever in the opinion of the Secretary of the Navy or the Secretary of War a strict enforcement of the provisions of section 1, rule I, of the civil-service rules would influence the result of a local election the issue of which materially affects the local welfare of the Government employees in the vicinity of any navy yard or station or of any arsenal or other military establishment, the Civil Service Commission may, on recommendation of the Secretary of the Navy or the Secretary of War, and after such investigation as it may deem necessary, permit the active participation [8] of the employees of the yard, station, arsenal, or other military establishment in such local election. In the exercise of the privilege which may be conferred hereunder, persons affected must not neglect their official duties nor cause public scandal by their activity (Executive order of May 14, 1909, as amended by Executive order of August 27, 1919).

NOTE.—It is not the practice of the War and Navy Departments to recommend, or of the Commission to grant, under this order permission to bosses or head men, by whatever designation known, or to any person whose recommendations have, by regulation, any influence upon the employment, promotion, laying off, or discharge of other employees, to hold local office. Prior permission must be obtained to hold local office under the order. The order applies solely to local municipal offices. The order does not apply to localities where the proportion of Government employees to the total population is negligible.

Employees residing in Arlington County, Va.—Special permission has been granted to employees residing in Arlington County, Va., to hold local municipal office by the Executive order of May 20, 1931, which is quoted in the following paragraph. The scope of this permission has been restricted by the act of August 2, 1939, which prohibits participation in political management or political campaigns. The permission granted by the Executive order of May 20, 1931, must therefore be exercised subject to the provisions of the act of August 2, 1939. (See sec. 34 above.)

Officers and employees of the executive civil service permanently residing in Arlington County, Va., may become candidates for [8] and hold local office in such county and may participate in campaigns for election to such offices."

In the exercise of the privilege granted by this order, officers and employees must not neglect their official duties and must not engage in National or State

[8] Executive order, July 12, 1924.

[8] Participation in political management and in political campaigns is now prohibited by the act of August 2, 1939. (See sec. 34, above.)

politics in violation of the civil-service rules." If there is such violation, the head of the department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

Officers and employees elected" or appointed to offices requiring full-time service shall resign their positions with the Federal Government. If elected" or appointed to offices requiring only part-time service, they may accept and hold same without relinquishing their Federal employment, provided the holding of such part-time office does not conflict or interfere with their official duties as officers or employees of the Federal Government.

This order is based upon the facts that Arlington County is substantially a municipality, that a considerable number of the residents and taxpayers are employed in the Government service, that service as local officers in such county should in no way involve general partisan political activity" and that the principle of home rule and local self-government justifies such participation.

The permission granted by this order may be suspended or withdrawn by the Civil Service Commission when, in its opinion, the activities resulting therefrom are, or may become, detrimental to the public interest or inimical to the proper enforcement of the civil-service rules (Executive order of May 20, 1931).

V. STATUTES RELATING TO POLITICAL ASSESSMENTS, POLITICAL COERCION AND DISCRIMINATION, AND THE PURCHASE AND SALE OF PUBLIC OFFICE

86. In addition to the restrictions of the act of August 2, 1939, civil-service rules, Executive orders, and departmental regulations, the freedom of officers and employees of the executive civil service to engage in politics is limited further by a number of statutes. These statutes are generally applicable to all officers and employees of the United States, whether or not in the classified service, and, in some cases, the language of the statute is sufficiently broad to include any person receiving compensation for services from money derived from the Treasury of the United States, and other persons. These statutes are set forth in the following sections. Some of the activities prohibited under penalty of fine and imprisonment are:

1. Solicitation or receipt of political contributions by one officer or employee from another.
2. The giving or handing over of a political contribution by one employee to another.
3. Solicitation or receipt of political contributions in a Federal building by any person, whether or not an employee of the Government.
4. Solicitation or receipt by any person of political contributions from any person receiving any benefit under any act of Congress appropriating funds for relief.
5. Solicitation or receipt of any thing of value, either for personal reward or as a political contribution, in return for the promise to use, or the use of, influence to secure an appointive office under the United States.
6. Payment or the offer of payment for the use of influence in securing an appointive office under the United States.

" Participation in political management and in political campaigns is now prohibited by the act of August 2, 1939. (See sec. 84, above.)

7. Promising employment, compensation, or other benefit made possible by act of Congress as consideration or reward for political activity.

8. Discrimination by an officer or employee in favor of, or against, another officer or employee on account of political contributions.

9. Depriving any person on account of race, creed, color, or political activity, of compensation or other benefit made possible by any act of Congress appropriating funds for relief.

10. Disclosure for political purposes of any list or names of persons receiving benefits under an act of Congress appropriating funds for relief and the receipt of such a list for political purposes.

VI. POLITICAL ASSESSMENTS

37. Solicitation or receipt of political contributions from Federal employees.—The United States Code, title 18, section 208 (Criminal Code, sec. 118, as amended), provides as follows:

> It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person.

Section 5 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads as follows:

> It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment, or other benefit provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes.[a]

38. Circulars of solicitation bearing names of Federal employees.—In an opinion of October 17, 1902 (24 Op., 133), the Attorney General held that the sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid for Congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the Civil Service Act (now sec. 118 of the Criminal Code), which declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employee of the United States. The statute unquestionably condemns all such circulars, notwithstanding the particular form of words adopted, in order to show a request rather than a demand, and to give the responses a quasi-voluntary character.

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[a] Under section 8 of the act penalty for violation of this section is fine of not more than $5,000, imprisonment for not more than 1 year, or both.

89. "Political assessments" defined.—The following is an extract from the decision in *United States* v. *Scott* (74 Fed., 213), in the Circuit Court of the District of Kentucky, rendered October 7, 1895, by Taft, J.:

To charge a man with soliciting a contribution from United States officers for a political purpose carries with it by implication a charge that the accused knew the purpose for which the contribution was solicited. The words "for a political purpose" may reasonably be construed to qualify not only the contribution but the solicitation. Similarly, to charge that a man received from another his contribution for a political purpose, by implication charges that the reception was for the same purpose as the contribution. * * * Nor was it necessary to set out the specific averment that the defendant knew that the persons from whom the contributions were received were officers of the United States.

The following extract is from the decision rendered by McCall, J., in the case of *United States* v. *Dutro*, *L. W.*, 1913, Western District of Tennessee (unreported):

The statute under which the indictment was found prohibits (and I shall speak of this concrete case) the postmaster at Memphis, Tenn., from receiving, or being in any manner concerned in receiving, any assessment, subscription, or contribution for any political purpose whatever from any official, clerk, or employee of the United States.

There are four counts in the indictment. Two of them charge the defendant with receiving subscriptions and contributions for political purposes from an officer, clerk, or employee of the United States, and two of them charge defendant with being concerned in receiving such assessment or subscription for political purposes from a clerk or employee of the United States.

Evidently one of the purposes of Congress in enacting the legislation was to prohibit superior officers from bringing pressure to bear upon their subordinates in order to secure contributions for campaign purposes, and the act is couched in very broad terms.

This evidence (which so far is uncontradicted) shows that the defendant, Mr. Dutro, did receive two contributions for campaign purposes from an officer or clerk or employee of the United States. Whatever may have been Mr. Dutro's frame of mind in regard to his connection with it, the one fact remains, as the evidence shows, that he received these contributions for the purposes and from the parties which the law prohibits. Perhaps and no doubt he did so without any thought that he was violating any statute, and felt that he was acting purely as a conveyor of these contributions to the political parties for whom they were intended, to accommodate those who were making the contributions, and purely as a personal matter, but I think under the evidence his action was in violation of the statute.

The other two counts, as I have pointed out, charge the defendant with being concerned in receiving assessments, subscriptions, or contributions for campaign purposes from a clerk, employee, or officer of the United States. There is a controversy here between counsel as to what the word "concerned" means. From what the law books say which have been read here, and from my own impression, it seems that the word "concerned" means to be interested in, or take part in, receiving such contributions. If Mr. Dutro, by his connection with these two subscriptions, took a part in the contributions being made by em-

ployees of the Government for campaign purposes, he would be guilty. I think the natural construction of the phrase or term or word necessarily leads to the conclusion that he did take a part in receiving the contributions, because he received and conveyed them from the contributors to the parties for whom they were intended, and, as the proof so far shows, he knew that the parties who were making the contributions were clerks under him in the Post Office Department, and he knew the purpose for which the money was to be used and where it was to go.

The foregoing case definitely establishes the principle that an employee of the Government who receives a political contribution from another such employee as a mere agent or messenger for the purpose of turning it over to a political organization commits a violation of the statute.

40. **Solicitation or receipt of political contribution in Federal buildings.**—The United States Code, title 18, section 209 (Criminal Code, sec. 119), provides that—

No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in section 208 of this title, or in any navy yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever.

41. **Letters addressed to Federal buildings.**—The Commission by a minute of March 23, 1897, held that addressing a letter to a Government employee in a Government building soliciting political contributions is a solicitation in that building within the meaning of section 12 of the Civil Service Act, but notwithstanding numerous violations no opportunity arose of having the question judicially determined until 1907, when an indictment was obtained against Edward S. Thayer at Dallas, Texas. A demurrer to the indictment was sustained on the ground that the act required the personal presence in the Government building of the solicitor. Appeal was taken to the Supreme Court, and the judgment of the lower court was reversed. (*United States* v. *Thayer*, 209 U. S. 39.) The opinion of the Court, delivered by Justice Holmes on March 9, 1908, establishes definitely the proposition that solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of this section, the solicitation taking place where the letter was received. (See also *United States* v. *Smith*, 163 Fed., 926, where the letter was personally delivered.)

42. **Letters delivered in Federal buildings.**—The Commission holds that the sending through the mails of letters to Government employees soliciting political contributions, their street or home address being omitted from the envelopes, with the result that the letters are delivered by the postal authorities in the Government building in which they are employed, constitutes a violation of this section. It is a maxim of the law that a person is presumed to intend the natural and probable consequences of his acts, and failure or omission to take measures to avoid delivery of such letters in a Government building will render the offender liable to prosecution.

43. **Discrimination on account of political contributions.**—The United States Code, title 18, section 210 (Criminal Code, sec. 120), provides as follows:

No officer or employee of the United States mentioned in section 206 of this title shall discharge or promote or degrade or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

(See also sec. 52 herein.)

44. **Payment of political contributions by one employee to another.**—The United States Code, title 18, section 211 (Criminal Code, sec. 121), provides as follows:

No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

45. **Penalties for assessments.**—The United States Code, title 18, section 212 (Criminal Code, sec. 122), provides that—

Whoever shall violate any provision of sections 208 to 211 of this title shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

46. **Foregoing offenses declared felonies.**—By section 15 of the Civil Service Act it was declared that persons violating any provisions of the four preceding sections should be guilty of a misdemeanor, but this section is now superseded by section 122 of the Criminal Code, above quoted, which makes such violation a felony in view of the following provision of section 335 of the Criminal Code (U. S. C., title 18, sec. 541):

All offenses which may be punished by death or imprisonment for a term exceeding 1 year shall be deemed felonies. All other offenses shall be deemed misdemeanors.

VII. PURCHASE AND SALE OF PUBLIC OFFICE

47. **Payment for influence in procuring appointive public office prohibited.**—The United States Code, title 18, section 149, provides as follows:

It shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

48. **Receiving payment for influence in procuring appointive public office prohibited.**—The United States Code, title 18, section 150, provides as follows:

It shall be unlawful to solicit or receive from anyone, whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying

the money, or any other person, in obtaining any appointive office under the Government of the United States.

49. **Punishment for violation.**—The United States Code, title 18, section 151, provides:

> Anyone convicted of violating sections 149 and 150 of this title shall be punished by imprisonment of not more than 1 year, or by a fine of not more than $1,000, or by both such fine and imprisonment.

50. **Promising benefits for political activity.**—Section 3 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads:

> It shall be unlawful for any person, directly or indirectly to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election.[*]

VIII. POLITICAL COERCION

51. Section 2, clause second, of the Civil Service Act directs that the civil-service rules "shall provide and declare as nearly as the conditions of good administration will warrant, as follows: * * * Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body." In pursuance of this section, civil-service rule I, section 1, provides, in part, that "No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof." This provision applies to all persons in the executive civil service, nonclassified as well as classified, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.

Section 1 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads as follows:

> That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.[*]

Section 7 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads:

> No part of any appropriation made by any act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any such act upon any

[*] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election.[54]

IX. POLITICAL DISCRIMINATION

52. Failure to contribute or render political service not prejudicial.—Section 2, clause second, of the Civil Service Act reads:

Fifth. That no person in the public service is for that reason under any obligations to contribute to any political fund or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Section 4 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads as follows:

It shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election.[54]

53. No disclosure as to opinions or affiliations.—Section 2 of rule I provides as follows:

No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened, or promised by any person in the executive civil service against or in favor of an applicant, eligible, or employee in the classified service because of his political or religious opinions or affiliations.

(See sec. 16 herein.)

54. Definition of discrimination.—Political discrimination consists in giving appointment, promotion, or any other favor to an appointee, eligible, or candidate because of his politics, or withholding appointment, promotion, or any other favor from an appointee, eligible, or candidate because of his politics. An appointing officer who appoints or refuses to appoint an applicant because the applicant does or does not entertain certain political opinions, who makes any inquiry of the applicant or any other person as to the applicant's political opinions or affiliations, or reduces an employee because that employee refuses to render political service, to be coerced in political action, or to contribute money for political purposes, or who advances or promotes an employee for opposite reasons, violates the Civil Service Act and rules.

X. POLITICAL RECOMMENDATION

55. Senators and Representatives.—Section 10 of the Civil Service Act provides:

That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member

[54] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

56. **Disclosing politics.**—Rule I, section 3, provides as follows:

No recommendation of an applicant, eligible, or employee in the classified service involving disclosure of his political or religious opinions or affiliations shall be considered or filed by the Civil Service Commission * * * or by any officer concerned in making appointments or promotions.

57. **Letters disclosing politics not to be considered.**—It is the duty of officers concerned in making appointments or promotions to refuse to receive or consider letters disclosing the politics or religion of an applicant, eligible, or employee and to explain to the writers that communications based upon such grounds will not receive attention or be filed.

58. **Recommendation for promotion.**—Rule XI, section 3, provides that—

No recommendation for promotion except in the regular form of periodical service-rating reports or unless it be made by the person or persons under whose supervision such employee has served shall be considered by any officer concerned in making promotions. Recommendation in any other form or by any other person, if made with the knowledge and consent of the employee, shall be sufficient cause for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service.

59. **Disclosure of names for political purposes.**—Section 6 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads:

It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.[*]

XI. JURISDICTION OF COMMISSION

60. **Withholding salary of employees engaged in political activity.**—Civil-service rule XV reads as follows:

For the proper supervision and enforcement of its functions, the Commission shall, if it finds that any person has been appointed to or is holding any position, whether by original appointment, promotion, assignment, transfer, or reinstatement, in violation of the Civil Service Act or of the rules promulgated in accordance therewith, or in violation of any Executive order or any regulations of the Commission, or that any employee subject to such act, rules, orders, or regulations is taking active part in political management or political campaigns, after notice to the person affected and opportunity for explanation, certify the facts to the proper appointing officer with specific recommendation for discipline

[*] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

or dismissal; and such appointing officer shall carry out the recommendation. In the event of any continued violation for 10 days after such recommendation, the Commission shall certify the facts to the proper disbursing and auditing officers, and such officers shall not pay or allow the salary or wages of such person thereafter accruing.

61. **Commission's determinations final.**—The General Accounting Office is without jurisdiction to review the determinations of the Civil Service Commission under rule XV (see above) and, upon certification by the Commission that an employee is holding a position in violation of the Civil Service Act and rules, the General Accounting Office has no alternative to withholding credit for payments made for salary or compensation (decision, Comptroller General, July 20, 1939, to the Postmaster General).

U. S. GOVERNMENT PRINTING OFFICE: 1939

[Title Omitted in Printing]

AFFIDAVIT

Roger W. Jones, now residing at 3912 Leland Street, Chevy Chase, Maryland, first being duly sworn deposes and says:

1. I am a retired annuitant of the Federal Government under the Civil Service Retirement Act. I was educated at Cornell and Columbia Universities. Much of my career in government service has been in the area of personnel management and administration. I entered the civilian service in 1933 and, except for the period 1942-1945 when I was on active duty as a reserve officer of the Army, I held various career and non-career posts until retirement in October 1968. Among these posts were three in the Bureau of the Budget—those of Assistant Director for Legislative Reference (civil service), 1949-1957; Assistant Director (statutory), 1957-1958); Deputy Director (Presidential), 1958-1959). In all three of these positions a substantial part of my time was spent in dealing with policy issues concerning the Federal civilian work force including all personnel legislation, Executive Orders prescribing rules and regulations, and matters relevant to the slowly emerging Federal concern with labor-management relations. Thereafter I served as Chairman, U.S. Civil Service Commission (Presidential), 1959-1961 which has among other duties administration of the laws and regulations on political activity of Federal employees; Deputy Under Secretary of State for Administration (Presidential), 1961-1962, the top personnel position in the Department; and Senior Consultant and Special Assistant to the Director, Bureau of the Budget, 1962-1968. As indicated above, all of these assignments have involved experience with administrative and legislative issues related to the Hatch Act. In 1967, I was appointed by President Johnson as a member of the Commission on Political Activity of Government Personnel, which was established pursuant to P.L. 89-617. The assignment of the Commission was to investigate and study Federal laws which limit or discourage the participation of Federal or State officers and employees in political activity. During the period March 1969-May 1971, I was recalled from retirement to full-time service as an Assistant Director of the Bureau of the Budget and its successor (after July 1,

1970) the Office of Management and Budget. In this assignment my responsibilities were in the fields of personnel policy and labor-management relations. They involved review, once again, of various proposals to amend the Hatch Act.

2. In the course of my experience as a Federal officer primarily concerned with management, personnel procedures, and administration of Federal employees, I have been responsible for developing personnel policies and procedures and for evaluating and criticizing such plans and policies developed by others. An important part of my duties in the foregoing jobs was the evaluation of: (a) effectiveness of groups of Federal employees; (b) procedures and prohibitions which should be instituted or modified in order to maintain and improve employee effectiveness and organization and (c) proposed policies and procedures, which if instituted, would affect—either favorably or adversely—the functioning of Federal employees. My duties have required such judgments in a wide range of contexts, not simply those relating to employees to whom the Hatch Act applies.

3. As Chairman of the Civil Service Commission, I shared with my two colleagues responsibility for administering the Hatch Act and had many opportunities to observe its impact upon covered employees and on the Federal service as a whole. More recently, as a member of the Commission of Political Activity of Government Personnel I had renewed opportunity to become familiar with the provisions of the Hatch Act proscribing "taking any active part in political management or in political campaigns." These duties also required me once again to consider the implications of the great number of prior Civil Service Commission rulings relating to political management and campaigning.

4. In my opinion, based upon my experience above described, there are four major categories of political activity which, if engaged in by Government employees, would impair the effectiveness and impartiality of the Civil Service:

(1) Running for national office (President, Vice President, Senator, Representative or elector);

(2) Soliciting funds from federal employees, coercion or any other partisan pressure exerted on employees;

(3) Serving as an officer, paid or unpaid, of any national or state political party; or serving as ward or precinct officer as those positions normally are conducted—that is, with strong, vocal involvement in party and interparty disputes and issues;

(4) Seeking political office where a conflict of interest arises between federal duties and duties as an elected official; for example, a HUD grant administrator running for a local political office where the political subdivision is seeking a HUD grant.

These four categories of proscription are specific, easily identified and enforced, and require a minimum of administrative interpretation. In my opinion, no other prohibitions on political activity of public employee are needed to insure the continued effective and impartial functioning of the Civil Service.

While I do not challenge the statutes which maintain the integrity of the Federal civil service system, it is pertinent to point out that the growth of that system in the years since 1939 has given it an entirely different outlook, focus, and profile from earlier years. In this period of time the Federal Government, in response to public demand, has established a large number of programs, policies and activities which basically affect the lives and livelihood of all Americans. The spectrum of occupations engaged in by Federal employees is as wide as that of our society. Federal employees are expected and urged to be full members of the society in which they live and work. I believe civil servants are basically no different from other citizens, and that in order to do their jobs in the broadest sense of serving the public interest they should participate in the activities of that society to the fullest extent consistent with impartial administration of Federal laws.

Our society has decided that most of its aims and purposes can best be advanced through elections and the operation of political parties. The dilemma starts there. The Hatch Act does not interfere with a wide range of minor kinds of political activity, but it does prohibit partisan political activity, and that means the attainment of party objectives —and without efforts to attain party objectives the whole idea of representative democracy becomes anything but democratic. I might have less concern about this aspect of the law were it not for the fact that modern communica-

tions have wrought massive changes in political organizational tactics and activities. Not only political parties, but also all citizens live and operate in an open arena of information about local, State, and national matters and political debate upon them. The conditions of political participation have changed; the prohibitions of the Hatch Act have not. I believe that Government involvement in the lives of the American people has reached the point where too large a percentage of them is being restricted in the free exercise of political rights.

5. Other activities prohibited by the Hatch Act, if allowed, would have no effect, in my judgment, upon the continued effective functioning and impartiality of the Civil Service. For example, I am convinced that it would not adversely affect the quality of the Civil Service to allow Federal employees to run for any local political office without reference to whether the candidate sought the office under an independent ticket or a partisan ticket so long as three conditions prevail: (1) the local office is not a full time job; (2) the compensation for it is minimal; (3) it involves no obvious interference with objective discharge of individual duties. This was the conclusion of the Commission on Political Activity of Government Personnel, of which, as I have indicated, I was a member and with which I agree. Neither do I believe it would adversely affect the quality of the Civil Service for civil servants to express opinions freely, in private or in public, on any political subject or candidate, or to participate in a party caucus.

6. As a former Chairman of the United States Civil Service Commission, I have continued to observe the employee confusion engendered by the vague and indefinite language of the statute as cross referenced to the mass of the pre-1940 decisions. The list of prohibitions growing out of the Civil Service rules is outdated, imprecisely drawn, and consequently so inconsistent as to preclude equitable administration. It follows, I believe, that bona fide Civil Service Commission attempts to explain and apply the statute are bound to result in conflicting decisions because the underlying statute is vague and indefinite. Thus, apart from the fact that the Act prohibits many harmless activities the Act also, because of the incorporation of the pre-1940 rulings, presents an inherently insuperable problem of construction for those charged with administering it: the

Civil Service Commissioners. Although the Commission has published various explanatory pamphlets attempting to clarify the scope of the prohibitions, I think that these attempts, by and large, have not dispelled employee confusion.

ROGER W. JONES

[Notarization Omitted in Printing]

[Title Omitted in Printing]

JAMES H. RADEMACHER, being duly sworn, deposes and says:

1. I am the President of the National Association of Letter Carriers (NALC), AFL-CIO, I have been the president since September 1968. From 1962 through 1968 I was vice president of NALC and prior to that time I served, with the exception of two years spent in the Navy, in the Postal Service beginning in 1941 when I was appointed career substitute carrier. By reason of my contributions to the Civil Service Retirement Fund, I am presently subject to the provisions of the Hatch Act relating to active political management and participation in partisan politics.

2. In my capacity as president of the NALC I have become familiar with the impact on members and officers of the NALC of those provisions of the Hatch Act proscribing political management and active participation in political affairs by government employees. I am also familiar with the confusion engendered by the vagueness of that Act amongst federal employees who are members of the NALC. On numerous occasions I have received letters from NALC members inquiring whether a particular course of action by them is or is not in violation of the Hatch Act. Attached hereto are copies of the following letters which I have received in the regular course of my duties as president of the NALC:

Ex. A, R. W. Whiting to Rademacher, January 25, 1971
Ex. B, R. C. Stager to Rademacher, January 12, 1971
Ex. C, Phillip J. Schmitt to Matthews, March 27, 1971
Ex. D, Wallace C. Rosand to Rademacher, January 18, 1971
Ex. E, Wallace C. Rosand to Matthews, March 8, 1971
Ex. F, Connoughey to Matthews, March 5, 1971
Ex. G, Harold H. McCain, Jr. to Rademacher, January 16, 1971
Ex. H, Lowell J. Matthewson to Rademacher, January 24, 1971
Ex. I, Paul LeClair to Rademacher, January 15, 1971
Ex. J, Edward Dombrowski to Rademacher, January 11, 1971
Ex. K, Edward Dombrowski to Matthews, December 26, 1971

Ex. L, Charles Tornavacca to Matthews, March 6, 1971

Most were sent to me or to NALC's attorney, Thomas C. Matthews, in response to a notice published in NALC's newspaper explaining NALC's participation in this suit and asking the membership to write in response about their personal concerns and experiences as employees governed by the Hatch Act. These letters reflect the employees' confusion as to the scope of the prohibitions of the Hatch Act and the further fact that government employees desire to engage in political activities and would engage in them in the absence of the uncertain prohibitions of the Hatch Act.

3. Based upon the continuing correspondence I received from the membership and upon my personal conversations with members, it is my opinion that many members desire to participate in activities permitted by the Hatch Act but are afraid to do so because local federal authorities misinterpret the prohibitions of the Act. It is also my opinion, based upon the attached correspondence and my conversations with members, that they would actively engage in local politics if such participation were clearly allowed. In many situations employees, because of the fear of job loss, may even be unwilling to try to secure a formal ruling on a proposed activity out of fear of offending a supervisor. Thus the exercise of the right is foregone. In other situations employees simply are unable to understand the various government publications seeking to explain the prohibitions of the Hatch Act and are afraid or unwilling to take the chance of losing their jobs by making a wrong decision.

4. I am personally familiar with the direct and adverse impact of the Hatch Act upon the conduct of union activities. I am a "hatched" employee. I am subject to the prohibitions of the Act even though I am on leave without pay and have no federal duties requiring my time and attention. Of the twenty-four national officers of the NALC, all are covered by the Hatch Act, all of the fifty state directors of the NALC are similarly covered by the Hatch Act. I estimate that 95 percent of all officers of the NALC are subject to the Hatch Act. Because the leadership of the NALC is subject to the Hatch Act, this Union is unable to engage in activities which other unions, not subject to the Hatch Act, do engage in. Specifically, a traditional form of union activity is the advice to the rank and file membership of the

voting records on matters of importance to the membership of candidates for political office. The AFL-CIO, with which NALC is affiliated, regularly distributes to its member unions a tape recording entitled "COPE" discussing the records of various political candidates for state, local and national office on particular issues of vital interest to the union members. As a "hatched" employee of the federal government, I am inhibited from doing what my counterparts in all other unions do, namely distributing this tape to local unions in order to disseminate the AFL-CIO's analysis of voting records and qualifications of candidates on issues of vital importance to union members. I am informed and believe that such activity on my part might be construed to constitute soliciting votes on behalf of a partisan candidate.

5. I am convinced that if the members of my union were clearly permitted to engage in local politics and to express publicly their views on political candidates that a substantial number would do so. I am also convinced that their engaging in such political activities on off-duty hours would in no way impair their effectiveness on the job during working hours. In fact, I believe permitting such activities would probably improve employee morale considerably. Under the present system, union members feel like second class citizens, and do not understand why they are singled out to be prohibited from engaging in local partisan politics or from freely expressing their political views. Frequently coupled with this sense of being deprived of the rights that all other citizens enjoy is an attitude of fear of engaging in any political activity since the penalties imposed by the Hatch Act are extremely severe—termination or a thirty day suspension. In my opinion, both as a former letter carrier and as a union official familiar with the employment situation of letter carriers and other members of NALC, removing the prohibitions against local partisan activity and free political expression would have a positive and favorable effect on the efficacy of federal employees.

JAMES H. RADEMACHER

[Notarization Omitted in Printing]

January 25, 1971

Mr. James Rademacher, President
National Association of Letter Carriers
100 Indiana Avenue
Washington, D.C. 20001

Dear Mr. Rademacher

Please refer to the NALC's bulletin (#1, dated January 7, 1971) where you asked for our stories on how the Hatch Act has affected us.

Under section three of this request here is my story: My wife, a Chicago School teacher, has acted as a Democratic judge in our precinct, in DuPage County, for almost every election for the past three years. This election, the November 3rd one, both of us wondered why I couldn't be a judge.

I asked everybody in the Glen Ellyn Post Office and got the same answer, No!

When I was finally referred to the Postmaster, he gave me the same answer, but with the suggestion that I call the Chicago Regional Office and asked the legal council of the Post Office. I did and got the same answer, No!

Now this is just a little silly. On the day of the election the campaign is over. The voters come to the polling place with their minds made up. And I couldn't campaign if I wanted to, some judge of the other party would run me out. That is why they have judges there from both parties.

R. W. WHITING, *Secretary*
Branch 2402—NALC
378 Cottage
Glen Ellyn, Illinois 60137

Ex. A [to Rademacher Affidavit]

January 12, 1971

Dear Sir;

In June 1968, I wanted a leave of absence to run for Clerk of Court, Floyd County, Georgia. The Postmaster at Lindale, Ga., where I am employed, notified the Regional Office, Atlanta, Ga. of my request. He in return received a letter on June 5, 1968 from the Regional Office. The Post Office form 1702, dated April, 1967 was returned with all squares checked except No. 2 (Title and location of the office). The following statement was typed on the bottom of the form: "Mr. Stager may not run for Clerk of the Court without specific approval of this office. Leave without pay for the purpose of campaigning would come under the restrictions of 721.53 Postal Manual." The form was signed "C. B. Gladdin".

R. C. Stager
Rural Carrier
Lindale, Ga. 30147

Ex. B [to Rademacher Affidavit]

2045 E. Beckert Ave.
Pittsburgh, Pa. 15212
March 27, 1971

Mr. Thomas C. Matthews, J.
1320—19th S. N. W.
Washington, D. C.

Dear Mr. Matthews:

I am enclosing a letter from James H. Rademacher to me, which will explain why I am writing to you.

On the day of the primary election in Pa. in 1947, much to my surprise and without my knowledge I discovered that I was a write-in candidate on the Democratic ballot for the office of "School Director" of Reserve Township Allegheny County, Pa. in which I live. It followed that I won that nomination and the very next day I notified Mr. Wm. Sullivan, who is now deceased, my supervisor at the North Side branch of the Pittsburgh Post Office, of this fact and after consulting the Post Office Laws & Regulations he told me that I could not run for this office. An assistant, Mr. Babylon also now deceased disagreed and said that there was an amendment to this rule, permitting the holding of the office of school director by federal employees. We three looked at this amendment and at least tacitly agreed that everything was in order.

I went on to win in the general election but was concerned about receiving a small salary of $400. per year which I would receive as Treasurer of the school board, to which I would subsequently be appointed. I then tried to consult with the then postmaster of Pgh. Pa. Mr. James C. Smith who is also now deceased, concerning this salary. Mr. Smith being very busy asked me to come back to see him when this appointment would be made. It happened that as time went by I had forgotten all about returning to see him, as I had become very busy in my new role.

During this period in 1949 the secretary of the school board had to resign because of poor health and I was appointed to that vacancy.

I was asked to run again in 1951 for that same office, this time on the regular ticket. I did so and won again. I served that term of six years after which I felt I had enough and announced this to those concerned. I was prevailed upon

by the president of the school board, the principal of the school and the Democratic ward chairman and others to run again for the office. Feeling that I could still contribute something I consented.

About a week or two before the general election in 1957 the bombshell fell. I was called over to the Civil Service Commission to answer a charge that I was engaging in political activity since 1947.

I was so amazed to find out that there could be anything wrong with my activities concerning the school board. The rest is a matter of record. I was dismissed from my employment, subject to a hearing which I requested and received.

The investigation and hearing disclosed that I was not guilty of any overt political activity, but that my running on a national political party ticket each time except that of the write-in ballot constituted violations of the Hatch Act. The Civil Service Commission also stated that I should have sought their council instead of relying on the opinion of my supervisors. I received a ninety day suspension from my employment as penalty.

Having won the 1957 election, I immediately resigned as School Director of Reserve Township and relinquished the office of Secretary of the Board shortly thereafter. Needless to say this has been quite a shocking experience for me and has affected my outlook on life itself.

To answer some of the questions posed by Mr. Rademacher, I present the following: I was aware of the Hatch Act but because of the amendment to the P. L. & R. I believed my activities to be exempt.—My experience in this case has completely stopped me from any political affiliation whatsoever.—A School Director in Pa. is a member of a Board of Directors which carries out the laws of the State regarding the education of its constituents. It is largely a policy making body. School directors serve without salary or pay.

I trust that this information may help you in presenting a challenge to the Hatch Act.

Sincerely Yours,

PHILIP J. SCHMITT

Ex. C [to Rademacher Affidavit]

Jan. 18, 1971

[Letterhead Omitted in Printing]

Mr. James H. Rademacher, President
National Association of Letter Carriers
100 Indiana Ave., N. W.
Washington, D. C. 20001

Dear Jim:

In response to your request from any letter carrier who has ever been investigated for violation of the Hatch Act, I will tell of my case.

During either the 1960 or 1962 election, my wife and I, along with two other Duluth, Minn. couples by name of Mr. and Mrs. Helmer Hanson and Mr. and Mrs. Guy Spangenburg, went to a Democratic-Farmer Labor Bean Feed at the Shrine Auditorium in Duluth. After the speeches and meal was over, the MC announced that several young ladies would circulate throughout the crowd requesting donations for advertising space in the local paper. When the young lady asked me if I wished to donate and sign a paper signifying that I had contributed, I told her I was a Federal employee and couldn't do that. My wife told the young lady that she would donate a $1.00, which she did signing her name Mrs. W. C. Rosand. The next day the add appeared in the local paper but the publisher had left off the prefix Mrs. so the name appeared in print—W. C. Rosand. When I saw the ad, I called the Postmaster at the time, Mr. Glen Merritt and informed him of the error. All he said was there wasn't anything he could do about it. So I didn't do anything about it either. After a short period of time, I was informed that a fellow from the Civil Service Commission was coming to Duluth and wished to meet with me. I met with him after work and told him the complete story about the events. (On the way home from the Bean Feed I had explained to the two couples that we had gone with, the reason why I couldn't sign my name to an ad, I also had told Mr. William Watters, a Duluth attorney who was active in the DFL, about why I couldn't sign such an ad.) I also had gone down to the DFL Headquarters to see if they still had the paper that my wife had signed, which they did. I asked Mrs. Ingred Wells, who was also active in DFL circles and who eventually became our acting PM, if she would hold

on to the paper in case anything ever came of it. Of course, I gave the Civil Service investigator the names of all the people who knew about the event and he made appointments with each of them and received corraborating statements from them about my involvement. When he went down to the DFL Headquarters, Mrs. Wells still had the paper my wife had signed and he took a photograph of it. A few weeks after the investigator was here in Duluth, I received a letter from the Civil Service Commission clearing me of any wrong doing.

Shortly after I had received the letter from the Commission, I couldn't refrain from having a few words with the postal inspector who had turned me in. I told him that if he had been any kind of a man he at least would have come to me and asked my side of the story. I had no knowledge whatever that I had been turned in until I received the letter from the Commission requesting a meeting.

In my opinion, the Hatch Act should be declared unconstitutional because there is no reason why we, as Federal employees should not have the same rights as ordinary citizens. Personally, it was embarrassing to me to have my friends bothered for such an investigation and my friends who were questioned felt the same way.

Good Luck.

Sincerely,

WALLY ROSAND

Ex. D [to Rademacher Affidavit]

March 8, 1971

[Letterhead Omitted in Printing]

Mr. Thomas C. Matthews, Jr.
1320-19th St., N. W.
Washington, D. C.

Dear Sir:

I wrote to President Rademacher of the National Association of Letter Carriers on January 18, 1971 detailing my experience the time I was investigated by the Civil Service Commission for violation of the Hatch Act. I received a letter from Mr. Rademacher in return in which he asked two questions, the first, has this experience or the Hatch Act itself deterred you from engaging in political activity? My answer to this is yes. I happen to be a individual who has strong beliefs towards one political party and I would like to do lots of work to help this party. At the present time, my wife does help but I would like to be able to engage in helping do some mailing etc. for them. The other question, "Is there any specific activity which you feel you would like to engage in were it not for the Hatch Act? My answer to this is also yes. As I mentioned above I would like to help more on detail work. I also would like to be able, publicly, to endorse candidates when they have their ads in the papers.

I think the Hatch Act is a violation of the human rights of Federal employees and it should be taken off the books at the earliest possible time.

Sincerely,

Wallace C. Rosand,
3945 Maxwell Ave.
Duluth, Minn. 55803

Ex. E [to Rademacher Affidavit]

Ligonier, Pa.
March 5, 1971.

Dear Sir,

Recently received a letter from our President, James H. Rademacher concerning the Hatch Act.

I wanted to run for the office of School Director. It was a "partisan" election in the sense you would have to run as a Democrat or Republican. I did desire to run as a party candidate. When I wrote to the Civil Service Commission in Philadelphia, Pa. asking for permission, I definitely wanted a yes or no answer. My letter was assigned to the Interagency Board of U. S. Civil Service Examiners for Central and Western Pa. located in Pittsburgh, Pa. My reply was:

Dear Mr. M. Connaughey:

Reference is made to your recent request for information on political activities permitted Federal employees.

We are enclosing two pamplets [sic] on Political activity which you can apply to your individual situation.

If you have any further questions, please advise.

Sincerely,

STANLEY F. BREM
Ass't Executive Officer

The two pamphlets were "Political Activity of Federal Officers & Employees", and "Code of Ethical Conduct."

After reading the two pamplets, [sic] I did decide not to run because I wanted to be a party candidate.

Our School Directors meet once a month for a regular meeting which would last for perhaps four or five hours. The duties involve agreeing on a budget and school procedures, etc. When it is "budget time" considerable more time is involved. Depending on hoy active a director wishes to be a total of 2 evenings a week can be devoted to this work.

When I first decided to be a candidate for School Director which was last July, that was when I was seeking a definite "yes or no" from the Civil Service Commission. As peti-

tions are now being cir[illegible] for the primary election in May.

I would certainly desire to run for School Director if it were not for the Hatch Act.

Hoping this information is helpful to you for your proposed challenge to the Hatch Act.

Sincerely,

JOHN L. MCCONNAUGHEY
Br. 3530 N.A.L.C.
RD#3-9-B
Ligonier, Pa. 15658

Ex. F [to Rademacher Affidavit]
[original of letter was in longhand]

18 Noank Ledyard Rd.
Mystic, Conn. 06355
Jan. 16, 1971

Mr. James Rademacher
President
National Association of Letter Carriers
Washington, D.C.

Dear Mr. Rademacher:

I am writing you regarding your recent request for information for possible use before the courts regarding the Hatch Act.

I live in the town of Mystic, which is part of the Town of Groton, Connecticut. All elective offices within the Town are non-paying offices. Our structure is basically—a nine member Town Council, and 40 member Representative Town Meeting, Board of Education and the various Selectmen.

I am now, and have been for five years, active in the PTA. In the fall of 1969 I was approached by the Chairman of the Democratic Town Committee (Mr. Mortimer Wright) and asked to run for election to the Board of Education. Needless to say because of my interest in education I was very interested. The Postmaster at the Mystic Post Office told me I could not seek this office because of the Hatch Act. I inquired with the Civil Service Commission and received a pamphlet entitled "Federal Employee Facts, Political Activity Rules for Federal Employees, Fact No. 2, 1964-0-726-856." This stated that I may not participate in a partisan political election. I refused the nomination. It may be of interest to know that the person who replaced me as the party candidate was elected and is now the Chairman of the Board of Education for the Town of Groton.

A few weeks ago I was asked to seek the Town Committee endorsement for filling a vacancy in the Representative Town Meeting and represent the Mystic area. I was told by management that I could not accept appointment to an elective office. I again refused to participate in the nomination process. There appears to be a Board of Education vacancy coming up soon as a result of a member resigning. This again is an elective office that would be filled by appointment until the next general election. I will be ineligible to accept this nomination.

I am now President of the Groton PTA Council and represent 15 schools when discussing educational goals, concepts, etc. My term expires in May 1971 and I will not seek reelection to this nonpartisan office. It is very frustrating not to be able to participate in the formation of policy concerning your own community. I shall as I guess most Federal employees do, sit back and let someone else make my decisions for me. Obviously, since I cannot actively participate, why participate at all?

Very respectfully,

HAROLD H. MCCAIN JR.
Career Carrier, T-5
Branch 1429, NALC

Ex. G [to Rademacher Affidavit]

NOTE: All elective offices for the Mystic area are held through the Town of Groton—Mystic itself falls in the Groton political structure.

[Letterhead Omitted in Printing]

24 January 1971

James Rademacher, President
National Association of Letter Carriers
100 Indiana, N.W.
Washington, D.C.

Dear President Rademacher;

This is being written in response to a request you made in Bulletin Number 1, January 7, 1971 for information concerning alleged violations of the Hatch Act.

Some years back, perhaps twenty, I was elected delegate to the Dubuque County Republican Convention. The morning after this fact was published in the local paper I was called into the local postmasters office and was told that if I attended this convention as a delegate, I would lose my job. I wrote the Republican Central Committee of this county and notified them that I would be unable to fullfill the duties of delegate.

Needless to say, since I am still a letter carrier, I have refrained from further political activity. This has been entirely because of the Hatch Act. I feel that without the Hatch Act, or other similar law, I would have become very active in local politics.

I have contacted a member of the Central Committee of the local Republican party and am attempting to determine the date of the above incident. Anthony Schrup, since retired, was our postmaster at the time.

LOWELL J. MATTHEWSON

Ex. H [to Rademacher Affidavit]

Jan. 15, 1971
Two Rivers, Wisc.

President James Rademacher
N.A.L.C.
100 Indiana Ave. N.W.
Washington, D.C. 20001

Dear President Rademacher:

The N.A.L.C. Bulletin of Jan. 1, 1971 carried a request for instances of adverse impact of the Hatch Act on someone's wishes or conduct. Also names of employees who have refrained from participation in politics because of fear of violating the Hatch Act.

I feel I fit in this category. I was appointed a Sub. Carrier on Apr. 1, 1949 and have since been promoted to Supt. of Mails and in 1970 to Asst. P.M., Level 10. I am still an Associate member of the N.A.L.C. I am 46 years old and I have always felt that one of the greatest fringe benefits we have is optional retirement at age 55. However one must have something to retire to at age 55 and I feel politics is extremely exciting as a second career. To hold State Political Office some day as a assemblyman or Senator is as much my lifes ambition as a successful Postal Career has been.

To be successful it is imperative that I identify myself with a Political Party now and perhaps as County Chairman prepare myself to run as a candidate for State Office when I am eligible to retire. As it is now I can only pay dues and go to meetings but I am very reluctant to participate or even voice my opinion for fear of violations of the Hatch Act and possible reprisals.

As a Citizen, property owner, taxpayer, and father of 9 I sincerely believe the Hatch Act is discriminatory against me because I cannot fully participate in Partisan Politics or run for or hold Political Office while an employee of the U.S. Post Service. My neighbor is an employee of the Wisconsin Public Service Corp. and has none of these restrictions. If the new U.S. Postal Service is truly free of Political influence the Hatch Act should and must be repealed.

On another note, when on when, are we going to ask for compulsory retirement at age 65. All employees and

their organizations continually ask for comparison to private industry so lets join them on 65 retirement. Any R.I.F. should start with this change not only to open more promotion opportunities but to provide a more vigorating new U.S. Postal Service.

Sincerely Yours,

PAUL LECLAIR
324 22nd St.
Two Rivers, Wisc. 54241

Ex. I [to Rademacher Affidavit]

[Letterhead Omitted in Printing]

January 11, 1971

President James H. Rademacher
100 Indiana Ave., N.W.
Washington, D.C. 20001

Dear Jim:

According to the NALC Bulletin No. 1, dated Jan. 7, 1971 our office is seeking documented information so that we who have been prohibited from taking an active citizen participation in local government due directly to the provision of the unconstitutional Hatch Act.

Jim, as you may know I have been hoping and yes praying for years that someone or something could be done with this Hatch Act, I even mentioned it several times at our seminar and to postal officials, that I would like to be given the opportunity to make a test case of the certain provisions of the Hatch Act against me taking an active part in my government and seek local office as a partisan candidate. I will not go into great detail on my past and present activities in local government for now but will wait your reply, if you are interested in more details or the legal counsel Tom Matthews, Jr.

Since May of 1968 I have been placed into an odd situation time after time in my efforts to devote my valued services toward the betterment and helpful services in our local township government in Buena Vista Charter Township. All due directly to the unconstitutional provisions of the Hatch Act. Since 1950 I have been active in a limited way in our local township affairs. But it seems when I want to take a more active roll and run for office or become more involved I MUST SEEK THE PERMISSION OF THE LOCAL OR REGIONAL POSTAL OFFICIALS to take more active roll in my government as an interested citizen.

May 1961 I first asked the local Postmaster of the limitations of the Hatch Act because of my employment as a letter carrier at the Saginaw Post Office, I wanted information so that I could run and seek the office of trustee in Buena Vista Township. You would have thought the world caved in when I was told my chances were very slim, by the local officials. Of course then I really wanted to run and get permission as I was told I would have to do. The local officials were stunned when I pursued the issue.

It seems like in the whole U.S. nobody ever questioned the provisions of the Hatch Act, in May of 1961, at least in the local area and in the Chicago Region. After several months of inaction and we are checking Etc. I sought the assistance in July 1961 of Rep. Congressman James Harvey from the 8th District of Michigan to help me seek an OK to run as a candidate on the Union Party (the only party at that time in the township). Again and again I was stunned by the delays and inaction in one way or another, from the local Postal officials, the Regional and even the Civil Service Commission in Washington, D.C. and finally went up to the 3rd in Command in the Post Office Department just below the Postmaster General, one of his Asst's. The deadline for filing was Dec. 31, 1969. I was called at my home by Congressman Harvey in the afternoon of Dec. 28th, I think, I wasn't home. Then my wife told him I was at work, so thus Rep. Harvey called at the local post office where I was on duty and spoke to Rep. Harvey on the phone and he assured me that the Post Office Department has given me the green light to file my petitions. Rep. Harvey also stated that a confirmation in writing is on its way to the local Postmaster Billy Monroe from the Post Office Department which I insisted on. Well anyway I did file and was defeated for the office of Trustee in the Spring Election of 1962.

In the spring of 1964 a citizens group formed and organized and we formed an official local party called the Progressive Party to seek candidates and oppose the party in power locally with our own platform (which incidentally has been almost to the full extent adopted by the incumbent office holders over the years). We filed our required petitions as per the state statutes on May 22, 1964 with the Township Clerk. Again I was asked to head the new party as Chairman and ran for the office of Clerk after again going to the local Postmaster and begging his permission to run for local office, I was granted this permission to seek the office of Clerk. I was defeated in the election, Nov. 1964.

In the fall of 1965 we had an election to incorporate into a City with 9 City Charter Commissioners to be elected, I asked and received permission from the local Postmaster after much delay and discussion to run for the charter commission. I filed as a candidate and was elected. I

served as the Secretary and conducted several elections in the incorporated area, but due to the fear of high taxes we didn't succeed.

In 1967 the State Legislature passed a law in which all local splinter parties such as: our Progressive Party, Union Party, Peoples Party, and others were disallowed to be on the state election ballots. Since 1967 if I or others in the Federal employment would seek to run in local or any other elections, except where there is a non-partisan election as provided by a City Charter, we are prohibited to seek or take an active part now in the elections because of the partisan elections, where I would have to seek office as a Democratic or Republican candidate. As you and I know this is not permitted by the Hatch Act, for me as a letter carrier. Unless I would want to be dismissed from the Post Office.

Over the years I have taken part in local politics but in a limited way due to the direct conflict and always seeking permission and to be nicey-nicey or there was always that Hatch Act to stand in my way and its provisions.

At the present time I am directly involved in our township government affairs and many people have asked me to take an active part and I keep pointing out to them the Hatch Act and its provisions in partisan politics. I wanted to in the worst way to run for office this summer and fall for Township office but because of the state law and that I must run as a Democratic or Republican candidate, I could not afford to lose my job and then who would support my 5 children and wife. We are right now having a small revolution in Buena Vista and I'm again asked to take an active part which I am doing but not in a partisan way, right now. The incumbents of 20 years have been defeated finally and fresh blood has come in but to our disappointment and there may be a Recall Petitions for the Supervisor or maybe others too. So I'm being asked to be a candidate now if the Recall is called for. Of course here again I stand to get fired from the Post Office because of the partisan election set up. I appeared before the Township Board at last weeks meeting in request of many citizens to ask them of many questionable and legal actions they have taken recently and will do so again on Feb. 1, 1971.

Jim, should I make an attempt and seek the office of Supervisor and make a test case if the Recall Petitions

comes about? First seeking permission from the local post office. To see if they will grant my request.

Please excuse all the misQ's in typing. I'm tired but wanted to get this letter out to your office. I hope you can make it out and I'll try and find all the documents now in case you or the Counsel might be interested.

Sincerely yours,

EDWARD M. DOMBROWSKI

Ex. J [to Rademacher Affidavit]

Edward M. Dombrowski
190 S. Outer Drive
Saginaw, Michigan 48601

December 26, 1971
Phone 1-517-753-7357

Mr. Thomas C. Matthews, Jr.
Attorney At Law
1320 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Matthews:

This letter is in regards to my deep concern on the outcome of the court suit coming up concerning the Hatch Act vs NALC and others, me included. As your files will indicated I sent you materials last spring of 1971 of the conflict I have had in seeking local office and the chilling factor the Hatch Act has had on my becoming active in my local governmental affairs, in the township and the county.

I would hope that a favorable decision is soon rendered because of my interest in seeking a local partisan township office or a county commission representative also on a partisan basis. As you well know the Hatch Act is very restrictive to me and others to take an active part in our government and we hope to win the case. Any thing that I might be able to do to assist the suit, please let me know. I understand that a decision may be rendered in February, if so please let me know so that I can set the wheels in motion to seeking local office.

PS: I maintain that my constitutional rights are being denied me by the provision of the Hatch Act which have nothing to do with my job employer.

Sincerely,

Edward M. Dombrowski

Ex. K [to Rademacher Affidavit]

[Letterhead Omitted in Printing]

March 6, 1971

Thomas C. Matthews, Jr.
Attorney at Law
1320-19th Street
Washington, D.C.

Dear Mr. Matthews:

This letter is a follow up of my January 12, 1971 letter to the union's National Office.

The fear of the severe penalties from the Hatch Act prevented the Union from publishing in its newspaper the "Rubber City Mailman" the Akron Labor Council's recommendations for election to office in the November 4, 1969 election. The Union's fears were justified with the receipt of the November 19, 1969 letter from the U.S. Civil Service Commission. The fear of the Hatch Act penalties has deterred the union from freely participating in the 1969 and 1970 elections. The Union desires to endorse candidates and issues.

The Union in its desire to have removed from office the Congressman from the 14th District of Ohio, did republish facts as stated in the enclosed flyer, for distribution among union employees. Pressure was applied to me by my immediate supervisor who claimed that I was violating the Hatch Act. The Union did not apply its name and address to the flyer for fear of violating the Hatch Act. The flyer was then questioned as being in violation of State and Federal laws on political literature.

The Union wishes to freely participate in political activities. The Union's Executive Board on February 24, 1971 unanimously agreed it feared the Hatch Act due to its severe penalties. The Board believe the Hatch Act violates the Constitutional Rights of the Union and its members. I believe the Hatch Act violates the Freedom of the Press by restricting the "Rubber City Mailman" to not publish endorsements of political candidates and issues while the U.S. Constitution permits this freedom to other newspapers.

As a member of the Akron Labor Council's Executive Board, I believe my civil rights are being violated by the Hatch Act in view of the fact that my political activities are restricted while the other members of the Board are free to fully participate in politics.

The Union known as the National Association of Letter Carriers, Rubber City Branch 148, Akron, Ohio, and its members wish to be permitted, without fear of Hatch Act penalties, the right to freely participate in all political activities.

If I can be of any service to you on this matter, please feel free to contact me. I will avail myself on a moments notice.

With sincere best personal wishes, I am

Sincerely yours,

Charles Tornavacca
CHARLES TORNAVACCA
President, N.A.L.C. Branch 148
Akron, Ohio

Ex. L [to Rademacher Affidavit]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

MOTION FOR PROTECTIVE ORDER

Defendants, by their undersigned attorneys, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, hereby move the Court for a protective order directing that the Notice of Deposition to take the oral testimony of the Civil Service Commission on January 17, 1972 be vacated and ordering that the deposition not be taken. The ground for this Motion is that the Court has already held discovery inappropriate on the subjects which the Notice indicates that plaintiffs seek to examine.

In support of this Motion, the Court is respectfully referred to its Order of December 6, 1971 herein and to the Points and Authorities filed herewith.

Respectfully submitted,

L. PATRICK GRAY, III
Assistant Attorney General

HAROLD H. TITUS, JR.
United States Attorney

HARLAND F. LEATHERS
DAVID J. ANDERSON
Attorneys, Department of Justice
Attorneys for Defendants

[Certificate of Service Omitted in Printing]

[Title Omitted in Printing]

ORDER

This matter having come before the Court on defendants' Motion for Protective Order asking that the Notice of Deposition filed by plaintiffs to take the oral testimony of the Civil Service Commission on January 17, 1972 be vacated and the Deposition ordered not taken, and the Court having considered the papers submitted by the parties and its previous Order of December 6, 1971, and it appearing that defendants' Motion is well taken, it is, hereby, this 13 day of January, 1972.

ORDERED that the Notice of Deposition filed by plaintiffs to take the testimony of the Civil Service Commission on January 17, 1972 be and is hereby vacated and the Deposition be and is hereby ordered not to be taken.

GERHARD A. GESSEL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

STIPULATION

The parties, through their undersigned attorneys, hereby stipulate and agree that the following exhibits shall be deemed offered and accepted into evidence at the trial of this action:

1. Verifications of Complaints by Mr. Gee, Mr. Wylie, Miss Pinho, Mr. Myers, Mr. Hummel and Mr. Mandocino.

2. Affidavit of Anthony Mondello, dated September 1, 1971, and its attachments.

3. The incorporated determinations filed herein.

4. Defendants' Answers to Interrogatories and exhibits thereto.

The parties further stipulate that the following items shall be deemed offered into evidence at the trial hereof, subject to defendants' objection to the introduction thereof on the grounds of relevancy:

5. Affidavit of Roger W. Jones, dated January 5, 1972.

6. Affidavit of James H. Rademacher, dated January 7, 1972, and its attachments.

In addition the parties stipulate and agree that the court may take judicial notice of the following items, true copies of which have been filed in this action for the convenience of the Court:

7. United States Civil Service Commission, Pamphlet 20, May 1966, "Political Activity of Federal Officers and Employees."

8. Civil Service Commission Form 1286, "Political Activity and Political Assessments."

9. The report of the Commission on Political Activity of Government Personnel, 3 Volumes (1967).

10. The Civil Service Commission Political Activity Reporter, 3 Volumes (1971).

THOMAS C. MATTHEWS, JR.
Attorney for Plaintiffs

DAVID J. ANDERSON
Attorney for Defendants

Dated: 2/29 1972.

SO ORDERED:

For the Court

GERHARD A. GESSEL
United States District Judge

[Title and Index Omitted in Printing]

[3]

PROCEEDINGS

MR. TRUITT: The plaintiffs call Roger Jones. Whereupon,

ROGER JONES

was called as a witness, and having been first duly sworn by the deputy clerk, was examined and testified as follows:

MR. ANDERSON: Rather than interrupt the questioning of Mr. Jones, I would like to state our objection to his testimony is the same as our objection to the consideration of all of the affidavits.

JUDGE GESELL: A continuing relevance objection?

MR. ANDERSON: Yes, sir.

JUDGE GESELL: I would like to say this to you, Mr. Truitt. While counsel have stipulated to this gentleman's qualifications, I think it would be helpful if you asked him briefly to give the Court some understanding of his experience without attempting to fully qualify him. Just give us some idea of who he is.

DIRECT EXAMINATION

By MR. TRUITT:

Q. Mr. Jones, would you please answer that question?

A. Gladly. Your Honor, I have been in the Federal service from 1933 until my retirement in 1968, with two recalls since then. During most of this period I served as staff officer in the Bureau of the Budget, recently in 1970 [4] renamed the Office of Management and Budget. I was some nine years its Assistant Director for Legislative Reference. Thereafter, I was statutory Assistant Director. I was Deputy Director. President Eisenhower appointed me Chairman of the Civil Service Commission in 1959. I served there until the start of the administration of President Kennedy. He transferred me to the Department of State as Deputy Under Secretary of State for Administration, a chief personnel position of the Department of State. Thereafter, I returned to the Bureau of the Budget to serve as a Consultant and Special Assistant to the Director, largely concerned with personnel matters, personnel policy and things of that kind.

JUDGE GESELL: Very well.

By MR. TRUITT:

Q. Mr. Jones, in your affidavit filed in this action, you list four major categories of partisan political activity, which Government employees should be prohibited from engaging in.

Directing your attention to the third category—serving as an officer of any national or state political party; or serving as ward or precinct officer—would you explain in your opinion what would occur if public employees were permitted to engage in those activities?

A. In my opinion there are three answers to that question, Mr. Truitt. The first, and perhaps the least relevant for legal purposes, but certainly for public purpose is relevant, is [5] the fact that it would be, I think, almost impossible to assume an office of that kind without the assumption being made that the incumbent was ready and willing at all times to engage in partisan activities, inter-party disputes and things of that sort.

The second reason, which I think has more relevance, is that I think any party officer has an obligation to uphold positions and stands of his party, to do so publicly, and I believe this could create controversy.

While neither of these may be of the utmost final importance, I believe the fact also remains that the occupation of such a position would be very generally misunderstood by the public, and might give the appearance that the individual was open to demands, or was in a position to do things which would not be consistent with his office as a Federal employee.

Q. Turning to the first of the categories which you have listed as a prohibited act in your affidavit, running for national office such as President, Vice President, Senator, Representative or elector, would you explain to the Court what effect permitting such activity would have on civilian work force?

A. I believe there is automatically a most serious conflict of interest, which would be immediately raised as soon as the person accepted the candidacy, but above and beyond that, the individual would be put in the impossible position of either having to oppose, if he were from the opposing party, the programs of the Government which the other party sought to [6] change, or possibly the equally difficult

position of supporting positions which might be in conflict with the responsibilities of his own department or agency. We do have inter-agency conflicts in which Federal officers have to be most careful to maintain their own point of view. Above and beyond that, since I think under the Constitution every Federal officer is tied by a given line of attachment, even though it is indistinct at times, to the President as the Chief Executive Officer of the Government, that you would be placing a man in a potential position of being in opposition to the President, which I do not think is proper.

Q. Mr. Jones, the second prohibition described in your affidavit necessary to maintain the effectiveness and impartiality of the Civil Service is the prohibition against solicitation of funds, or any other partisan coercion exerted on employees. Is the prohibition against seeking national office necessary to protect against coercion of Government employees in your opinion?

A. No.

Q. Would you explain the basis of that opinion?

A. I believe that of all political activities, certainly the most pernicious is the utilization of any public office to intimidate, coerce, or even request fellow employees for contribution of funds, or contribution of time and effort on behalf of a partisan political purpose. I do not see that [7] there is any relationship between running for National office and this other obligation which transcends that. I believe a man could run for National office and still be most correct and punctilious about not seeking funds from Federal employees or fellow employees. But, I do not think that anyone, regardless of whether he runs for office, should be permitted to seek funds for partisan purposes.

Q. Mr. Jones, your affidavit also states that permitting public employees to run for local offices on a partisan ticket would not adversely affect the effectiveness of the Civil Service. Would you first describe what you mean by local office, and then explain what effect in your opinion it would have on the Civil Service to allow people—public employees to run for those offices?

A. May I make one slight correction, Mr. Truitt. I think when I said that I referred to certain kinds of offices which I will now explain. I think there are some offices that it would not be appropriate for Federal employees to run for.

The situation here is one which is extremely difficult,

your Honors, to try to bring into the detailed kind of focus that is a result of the change in the nature of the Federal Government programs over the course of the last thirty years. But, in an effort to be quite brief, let me put it this way.

I am absolutely convinced that in today's world, the Federal employee should be to the greatest extent possible, [8] a part of the society in which he lives. The spectrum of Federal occupations is as broad as the spectrum of occupations in American life. The programs and activities of the Federal Government have extended now to the point where, to use a figure of speech of my own, it seems to me that the Federal Government now is in the livingroom of Mr. and Mrs. America today across the land.

Under these circumstances, I think there are a great many obligations to the society in which we live, which should not be denied to Federal employees. Some of these, because of the state laws and other requirements, involve local partisan offices. They are not full time jobs. They are not jobs for which the compensation is substantial, or in some cases, it doesn't exist at all.

JUDGE GESELL: You are talking about such things as School Boards.

THE WITNESS: School Boards, Zoning Boards, Boards of Tax Appeal, in some jurisdictions the election officers of the state or of the town, registrars of voters and things of this kind, moderators at town meetings, and I could go on and give a rather long list. But, I think that list is illustrative enough.

JUDGE GESELL: Do you have any idea how many individuals are "Hatched" so to speak, in the country today? How many people are covered by the statute?

[9] THE WITNESS: In terms of Federal employees?

JUDGE GESELL: Yes.

THE WITNESS: All Federal employees of the Executive Branch generally are under the Hatch Act, except those appointed by the President and affirmed by the Senate.

JUDGE GESELL: What is that number today?

THE WITNESS: The number today is, I would say, approximately three and a half million.

JUDGE GESELL: And, with the state employees that are covered by the statute, how many more would you say?

THE WITNESS: This, I am afraid, we do not have any kind

of count on at the present time for one reason, and I think the reason is this. The growth in recent years of the Federal Grant and Aid Program, from a very small scale to now upwards of 40 billion dollars, is involved in view of the fact that the prohibition under that section of the act runs to persons whose principal employment is in a program financed in whole or in part by the Federal Government.

JUDGE GESELL: Do you have any idea or expert guess or estimate as to how many that would be?

THE WITNESS: Again, I would say in excess of three million.

JUDGE GESELL: So, that probably the coverage of the Act is generally in the neighborhood of six or seven million.

THE WITNESS: Yes. I am a little uncertain of my [10] Federal figure. I included in that figure persons who literally may not be covered. The Federal figure may be incorrect. It may be closer to 2.8 million than three and a half.

JUDGE GESELL: Roughly six.

THE WITNESS: In the neighborhood at least of six million employees I am quite sure, and then by implication many others are covered by similar statutes, or a similar application of law. A number of the states have set up their own.

JUDGE GESELL: Yes. Thank you.

By MR. TRUITT:

Q. Now that you have described what you mean by local office, do you think it would have any effect on the quality of the Civil Service to permit Government employees to run for such offices?

A. Will you repeat the question, Mr. Truitt?

Q. In your opinion, what would the effect be on the quality of the Federal Civil Service to allow Government employees to run for the local offices which you have just been describing?

A. You mean the part-time offices?

Q. Yes.

A. I think the good effect would be to make these people recognize the importance of their being a part of the society in which they live to the fullest extent, and further, above and beyond that, it would give them a much greater awareness of the interlocking issues that exist today as between Federal, [11] State and local Government.

In fairness, I might add, Mr. Truitt, there could be conceivably one small negative impact, which could be in the

nature of at least initially some public misunderstanding as to what the reason for this was. I think that if we move in this direction, we will have to make sure that the proper explanation is given to the American people.

Q. Would there be any other negative effect on the quality of the Civil Service?

A. None which is relevant or substantial in my view. One can always find reasons to complain about participation in politics of any sort. I think one other indirect thing, which should perhaps be mentioned, is one I have tested against experience rather carefully over the years.

As things now stand, it is possible for the Civil Service Commission to declare areas in which participation by Federal employees in political matters can take place so long as they run on a non-partisan ticket. While I have no doubt at all many non-partisan movements start as exactly that, over the course of time that they continue, they are certainly not non-partisan. They are just as much partisan, in my judgment, as those who carry their Republican or Democratic name tags with them. To that extent I think there is involved a degree of rationalization rather than rationale about this business of non-partisan participation in elections.

[12] MR. TRUITT: No further questions.

JUDGE GESELL: Mr. Jones, I had a question on your affidavit that I did want to take this opportunity to ask you to elaborate on a bit. You say on Page six that you have continued to observe the employee confusion engendered by the vague and indefinite language of the statute as cross referenced to the mass of the pre-1940 decisions. Could you give us a little better idea of what you are talking about there?

THE WITNESS: Yes, I can, sir. In various of my jobs, including the most recent period of service in the Office of Management and Budget and Bureau of the Budget, because of my former experience, I have had even our rather sophisticated and highly graded and highly paid staff come to me on countless occasions to ask whether I thought this, that or the other activity was prohibited by the Hatch Act.

Above and beyond that I have seen on any number of occasions employees attempt to read Pamphlet 20, or to look at the poster which the Civil Service Commission has

the agency post on their bulletin board, with a list of "dos and don't" or "permitted and not permitted", and stand there and shake their heads in concern, and I think in some degree of disbelief. Despite all of the efforts of the Commission to explain, there is great confusion today, and I think this is particularly true among the rank and file, with respect to the issue of expressing your views on political opinion.

[13] The action before you today has been brought on behalf of one of the organizations of our Postal Workers. I have had postal carriers say to me, "What do I do when a housewife asks me if I have some opinion about this, that or the other kind of Government program?" This kind of confusion is not good.

There has been a long argument on whether members of carpools may stop at the polls and vote on their way in in the morning, or whether this contravenes the restrictions against carrying people to the polls. The question of serving as an officer at an election—is this to be mixed up as serving as a partisan watcher or checker. I could go on, sir. Is this sufficient?

JUDGE GESELL: Some of the papers suggest that because of the uncertainties such as you have been talking about, that there may be a tendency on the part of supervisors and others in the Government who are advising Federal employees, to speak in terms of the policy of the Act, and suggest abstention perhaps even beyond that, which the statute itself contemplates. In your experience is that likely, or has that happened?

THE WITNESS: That is likely, and it has happened. Again, there are many circumstances that I could cite. I have heard important officials of rather large Federal installations make speeches to their staff at the time of political campaigns that were far removed from the actual [14] prohibitions of the Act, and have attempted to tell them, "I may not be accurate in all of this"—I am putting this in quotes—"I may not be quite accurate in all of this, but I want you to know it is our policy for you people to stay clear of political involvement.

JUDGE GESELL: Do you have any questions?

MR. ANDERSON: I have no questions, your Honor.

JUDGE MACKINNON: Would you liken the confusion under

the Hatch Act to the confusion that probably exists under the Income Tax Act?

THE WITNESS: Well, the analogy is arresting, your Honor, and perhaps it can be likened in two respects. The difficulty of writing in clear precise words exactly what one may do and may not do—that is the first. The second, I think, runs really to the almost abnormal, but nevertheless a very real societal fear on the part of ordinary folks when they are confronted with difficult language. They tend to freeze, and to that extent we have the same kind of thing. There is not, of course,.the same degree of very major penalties, but there is still a degree of penalty.

JUDGE MACKINNON: Which doesn't have penalties?

THE WITNESS: I say there is not the same degree of penalty prescribed for minor violations of the Hatch Act as can be assessed against one for even rather minor violations of the Internal Revenue laws. But, I think the effect is very [15] much the same. It has a very real effect on people's sense of fear. To have the statute books say that you lose your job because of violation of the Hatch Act unless three Civil Service Commissioners by a unanimous vote decree a lesser period of suspension is a pretty severe penalty.

JUDGE MACKINNON: We are talking about confusion.

THE WITNESS: I think this tends to bring confusion. When there are either civil or criminal penalties, people tend to be confused about what they may and may not do for fear of the penalties that may be imposed.

JUDGE MACKINNON: It is much the same type of confusion that exists in the tax law.

THE WITNESS: Correct.

JUDGE MACKINNON: Now, as I read your affidavit, you, also in addition to running for local office, sort of, whether expressly or implicitly, sanction participation in electioneering.

THE WITNESS: Yes, I do.

JUDGE MACKINNON: Local electioneering.

THE WITNESS: Yes, I do.

JUDGE MACKINNON: Of course, that is for whom? All candidates, I presume.

THE WITNESS: Yes, sir. This is for Federal employees. You know, they are free to do this.

JUDGE MACKINNON: Now, that is a pretty open door, isn't it?

[16] THE WITNESS: It could be, but I do not believe that it is a door which would be open so wide as to engender a large amount of public adverse reaction, nor do I think that most Federal employees are so short of judgment that they would use this in such a way that their conduct exceeded the bounds of normal good will, and good faith, and proper decorum as a Federal employee.

JUDGE MACKINNON: Just take the potentialities of it, and I think that is what Congress probably had in mind, and you don't have to go any further than the parties before us here today, the Postal Service. Now, in one 24-hour period, every individual in America, composed of about 200 million people, can have their doorbell rung by a member of the Postal Service, is that right?

THE WITNESS: That is right.

JUDGE MACKINNON: Yes, sir. And, you don't think that the potentiality of that on a political basis has any ramifications?

THE WITNESS: I think it has ramifications, but I do not believe this is an example of what would be done or could be done, because I think the Federal employees are just more responsibile than to do that kind of thing.

JUDGE MACKINNON: Well, maybe they are, but suppose you only got 70 percent of them working, as they have a legitimate right to do, say, under your theory, for an increase in salary. They want people elected that are going to be more [17] favorable to their salaries. Now, that would be a perfectly legitimate reason why they could go out and campaign for a particular Congressman, right?

THE WITNESS: Yes.

JUDGE MACKINNON: Doesn't the characterization of that in those terms indicate to you that it is something that we can't have in this country?

THE WITNESS: It is something which I think we should, very frankly, your Honor, take a chance. I believe that the public reaction, the congressional reaction, the reaction of the employee organization, Union leaders, the reaction of the employees themselves would be so instantaneous against abuse of this privilege that it would not be abused.

JUDGE MACKINNON: You say you ought to give it to them because they wouldn't use it.

THE WITNESS: No, I don't say that. I say we ought to give it to them so it can be used with discretion and good judgment, just as a normal citizen, I believe, uses his political freedom of speech with discretion and good judgment. We have had so many cases. May I say a word further, your Honor. We have had so many cases in the Civil Service Commission, including a number when I had the privilege of being its Chairman, in which the basic issue was had this man or this Federal employee, man or woman, engaged in the management of political campaigns because he had signed a petition or let his [18] name be used in connection with supporting the candidacy of this, that or the other person. In almost no case that I recall was this action in any way that I could see it, a threat to the Federal Service or to me.

JUDGE GESELL: The question before us isn't the one, with all respect, that Judge MacKinnon is presenting. The question is, it seems to me, at least, much different. If that type of organized campaign by the postal workers is quite clearly contrary to what we think should be the standards, it can be prohibited. But, does that mean that you fire a Federal employee because she takes a sandwich to her husband, or that you fire a Federal employee because he wears a button.

THE WITNESS: I don't think so.

JUDGE GESELL: Or you fire a Federal employee because he signs a petition against smog emanating from a local utility. I thought the issue here was the breadth and vagueness of the statute, and not the question of whether Congress could properly, narrowly and with specificity prevent certain types of expression of political activity.

THE WITNESS: Reading indictments before the Court led me to exactly the same conclusion, sir.

JUDGE PARKER: I was interested in your comment on allegedly non-partisan activity. Are you saying in your judgment many of these non-partisan groups in effect become partisan and are in violation of the Act?

[19] THE WITNESS: They are not in violation of the Act in its own term, sir, but I am saying many non-partisan movements over a period of time in my judgment become just as partisan as movements that carry a party banner, a donkey or an elephant.

JUDGE GESELL: Your point is the statute permits that.

THE WITNESS: That is right.

JUDGE GESELL: But, doesn't permit it in the name of the donkey or the elephant.

THE WITNESS: That is right. It is a very difficult kind of thing here. Some state laws insist that you run on a partisan ticket even for local office. If a Federal employee runs for Board of Education on a partisan ticket, he is probably automatically in violation of the Act.

There are areas of confusion, and there are broad areas of disagreement in which men of perfectly good will can disagree.

JUDGE MACKINNON: Well, of course, running for a partisan office on a partisan ticket, when a person runs, he runs with others, and his particular prominence might have the effect of attracting people to that particular ticket, and so the whole party ticket benefits. That is really what is involved in that circumstance, isn't it? And, that is what they are concerned about in it, isn't it?

THE WITNESS: I would respectfully disagree that it [20] attains that importance. I do not believe it does in the kind of office that I have in mind.

JUDGE MACKINNON: Well, it is a matter that varies with elections. If you have a good party ticket for county commissioner, school board, register of deeds, Clerk of Court, these are the people that have the workers that go out and fan over the District, and they are the ones that work for the ticket. They vote for the ticket straight down the line. In advocating their own campaigns, they advocate the vote for the ticket.

JUDGE GESELL: Isn't the point, however, that you can do that under the Hatch Act.

JUDGE MACKINNON: No, it isn't.

JUDGE GESELL: You can do that under the Hatch Act, as I understand it, if you run on the ticket of the Topeka Citizens Association. The whole citizens association can be organized, and you can run all you want. And, it is only when you have, as I understand what the witness is saying, affiliation with a political party. A citizens association can be partisan is his point, I suppose. That is the differentiation you are talking about.

THE WITNESS: That is the differentation.

JUDGE GESELL: There is no prohibition against partisan participation. There is only prohibition against partisan participation in one of the political parties.

[21] THE WITNESS: Yes.

JUDGE MACKINNON: I come from a state where we have large non-partisan elections. We even elect legislators on a non-partisan basis, without any party designation. But, all local officers, all judges are elected on a non-partisan basis, so I know what you are talking about. I know how it operates.

THE WITNESS: Are they endorsed, your Honor.

JUDGE MACKINNON: Some of them are.

THE WITNESS: This is another thing that brings very difficult problems of interpretation under the act.

JUDGE MACKINNON: This has been a changing thing. One of the parties tried to interject or have tried for many years to interject their endorsements into the scheme. A couple of the other parties stayed out of it. Generally they have now been shifting to the position where more or less all parties in the Metropolitan areas try to interject their partisan endorsement in a non-partisan office, but out in the rural community, it is pretty much generally the way it has been for fifty years.

JUDGE GESELL: Nothing further. Thank you, sir.

(Witness leaving stand.)

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SUPREME COURT OF THE UNITED STATES

No. 72-634

UNITED STATES CIVIL SERVICE COMMISSION, ET AL., APPELLANTS,

v.

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL.

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

DECEMBER 11, 1972

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